

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
01.04.2019	23.04.2019

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

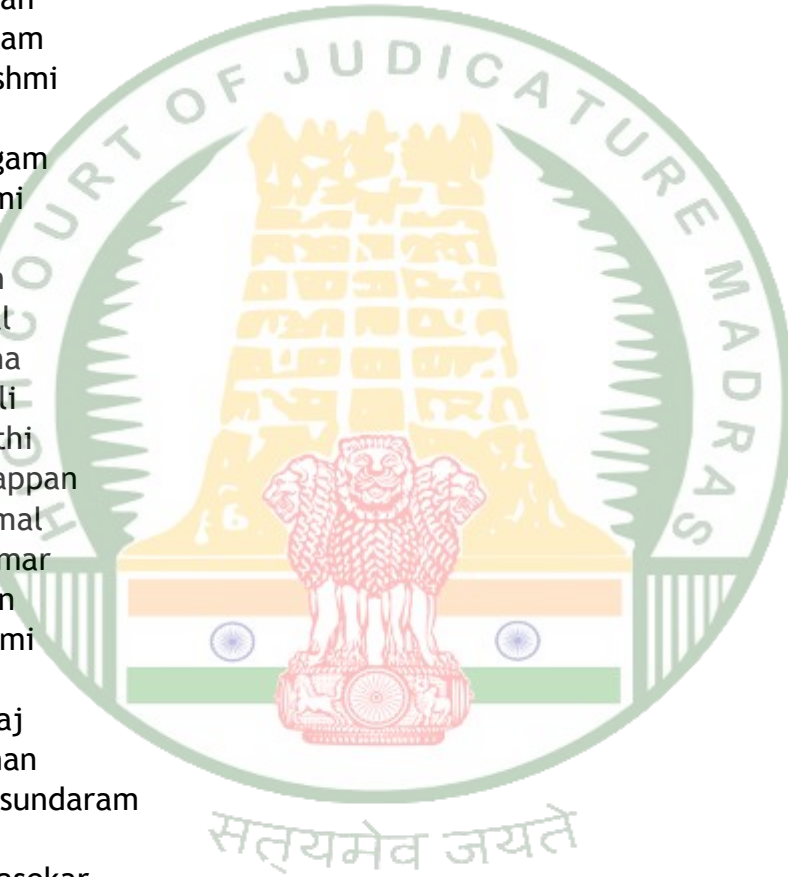
Review Application (Writ) No.58 of 2019
in W.P.No.31114 of 2017 and
W.M.P.Nos.7045 and 7050 of 2019

1. S.Srinivasan
2. K.Lakshmanan
3. M.Ramu
4. Chinaponnu
5. Mariyammal
6. M.Dhandapani
7. S.Selvam
8. R.Arumugam
9. D.Jeeva
10. M.Rangasamy
11. M.Natarajan
12. C.Muthu
13. Murugan
14. S.Rajeswari
15. S.Ganesa Kumar
16. Ponnarasi
17. Annamalai
18. S.Venkatesan
19. Sekar
20. Rani Jayaraman
21. Selvakumar
22. R.Soundari
23. V.G.Kannaiyan
24. Krishnaveni
25. Ranganathan
26. Punniyakoti
27. Tamilvanan
28. S.Raja
29. A.Anjalai
30. M.Rapheal
31. S.Saravanan



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32. B.Sekar
33. D.Ramesh
34. Navaneetham
35. Meganathan
36. J.Sumathi
37. Kumari
38. Krishnamurthy
39. A.K.Rajan
40. K.Natarajan
41. K.Arumugam
42. Dhanalakshmi
43. J.Valli
44. M.Arumugam
45. K.Lakashmi
46. J.A.Valli
47. Srinivasan
48. Annammal
49. S.Kumudha
50. N.M.Kabali
51. Thirumurthi
52. G.Kanniyappan
53. E.Muniyamal
54. Sanjai Kumar
55. A.Anandan
56. Jayalakshmi
57. S.Saroja
58. P.Mohanraj
59. P.Saravanan
60. P.Mohanasundaram
61. P.Sekar
62. G.Chandrasekar
63. K.Velusamy
64. K.Vijayaraj
65. C.Vijaya
66. N.Vedagiri
67. S.Vasuki
68. N.Ganapathi
69. K.Ravi
70. D.Mani
71. Thiruvenkadam
72. Selvi
73. Poongavanam
74. Dhuraisamy
75. Jagathambal
76. Shanthi
77. Karunai Selvam



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78. G.Sankar
79. K.Vasanth
80. G.E.Balan
81. A.Karupiah
82. P.Sivagami
83. M.Loganayaki
84. Rajaram
85. S.Muniyammal
86. M.Shanker
87. A.Arumugam
88. Malliga
89. S.Govindaraj
90. E.Kannan

... Petitioners/Petitioners

-vs-

1. The State of Tamilnadu
Rep. by its Secretary,
Department of Housing and Urban Development,
Fort St. George, Chennai-600 009,
Tamil Nadu.
2. The State of Tamilnadu
Rep. by its Secretary to Government,
Public Works Department,
Fort St.George, Chennai-600 009,
Tamil Nadu.
3. The Chairman and The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai, Chennai-600 009,
Tamil Nadu.
4. The Collector of Chennai,
Rajaji Salai, Chennai-600 001,
Tamil Nadu.
5. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003,
Tamil Nadu.
6. The Executive Engineer, PWD,
(WRO) (Arainiyar Basic Division),
Chepauk, Chennai-600 005,
Tamil Nadu.

7. The Assistant Commissioner,
Zone-XIII, Chennai Corporation,
Dr.Muthulakshmi Road, Adayar,
Chennai-600 020,
Tamil Nadu.
8. The Executive Engineer,
Division-VI, Tamilnadu Slum Clearance Board,
Chennai-600 018,
Tamil Nadu.
9. The Tahsildar,
Mylapore Taluk,
Chennai-600 028,
Tamil Nadu.
10. Rajiv Raj ... Respondents/Respondents

Prayer: Review Application filed under Order 47 Rule 1 of C.P.C., to review the order dated 19.02.2018 passed in W.P.No.31114 of 2017 and consequently allow the main petition, namely, W.P.No.31114 of 2017 and / or to pass such other order / orders, as this Hon'ble Court may deem fit, necessary and proper in the facts and circumstances of the case.

For Petitioners	:	Mr.A.L.Somayaji Senior Counsel For Mr.Anirudh A.Sriram
For R1, 2, 4, 6 & 9	:	Mrs.Narmadha Sampath Addl. Advocate General Asst. by Mr.S.N.Parthasarathy Govt. Advocate
For R3 & R8	:	Mr.S.Prabhu
For R5 & R7	:	Mr.K.Soundararajan
For R10	:	Mr.Roshan Balasubramaniam

ORDER

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

The present Review Application is taken out by the Petitioners in

<http://www.judis.nic.in> W.P.No.31114 of 2017 to Review the order dated 19.02.2018 passed by this

Court in the Writ Petition.

2. The Review Application arises under the following circumstances:

i) Being dissatisfied with the order passed by this Court dated 19.02.2018 in W.P.No.31114 of 2017, the Applicants had moved the Hon'ble Supreme Court in SLP (Civil) Diary No.46442 of 2018 and subsequently, the said petition came to be dismissed as withdrawn on 11.01.2019, with a liberty being granted to approach this Court within Four Weeks, with further direction being issued to maintain 'status quo' till then. Pursuant to the said liberty being granted by the Hon'ble Supreme Court, the Applicants are before this Court, seeking to Review the order dated 19.02.2018 passed by this Court in W.P.No.31114 of 2017.

ii) It was submitted by the Applicants that Survey No.3961/3, situated at Elango Street, Govindasamy Nagar, Chennai is a notified slum under Section 3 of Tamil Nadu Slum Areas (Improvement and Clearance) Act, 1971 (in short 'the Act') and unless and until a notification is issued under Section 11 of the Act, the Applicants cannot be disturbed. Once the Government forms an opinion that the place notified under Section 3 of the Act is not feasible for improvement and development, thereafter a declaration is issued by the State Government under Section 11 of the Act for clearance of the notified slum area. It is a settled law by several judgments of this Court that eviction of residence in the slum area is impermissible without invoking the provisions of Section 11 of the Act.

iii) On behalf of the Applicants, it was pointed out that the 'Slum Dwellers' are completely different from Encroachers, because after declaration of a particular area as Slum by the Slum Clearance Board, the Slum Dwellers are permitted to occupy the area, whereas the Encroachers reside without any Authority. When the area is a designated slum, notified by the State Government and the intention of the Government was to develop it, there is no question of these residents residing on the Southern side of the 'Elango Street' at a distance of more than 40-45 feet from Buckingham Canal and the Applicants, by no stretch of imagination, can be classified as Encroachers, as they fall within the ambit of Sections 3 and 11 of the Act, 1971.

iv) The Applicants had argued that they are not the real Encroachers and the actual 366 persons residing on the 'Banks of the Buckingham Canal' were already removed. It was also pointed out that the Buckingham Canal itself is about 45 feet, after which the banks of Buckingham Canal is about another 5 feet and thus, it is clear that Elango Street is situated beyond another 45 feet and they reside on the Southern side of the Elango Street with an adequate distance of over 40-45ft. from the Buckingham Canal, which alone is notified as slum under the Act.

v) The Applicants' submission was that since the 'Buckingham Canal' falls within the jurisdiction of Public Works Department and on inspection, the Encroachers were removed by the PWD Officials and at the same, they cannot

deal with the property, in which the Applicants are residing in view of the fact that the said area comes within the jurisdiction of the Tamil Nadu Slum Clearance Board.

vi) The Applicants took a stand that though the 10th Respondent has no vested interest in the present issue on hand, in order to enjoy the entire portion of the property of the Applicants and to take control of the area, he wanted to evict them in an illegal manner. When the Report clearly shows that there is a distance of 40 to 45 feet from the canal bund and the Government themselves had admitted the same in their 'Status Report', the act of the Respondents in evicting the Applicants from the Elango Street is a clear violation of Fundamental Rights and therefore, the 10th Respondent has no 'Locus standi' to evict the Applicants by way of filing the Public Interest Litigation.

vii) It was also submitted that when the Applicants sent an application under the RTI Act, requesting details in respect of Southern Side of Elango Street regarding enumeration, it was replied that the enumeration process was conducted only after 09.01.2014 and thus, it is vividly clear that there had occurred a mistake, which requires immediate correction. Therefore, it was contended that the Applicants are statutorily notified slum dwellers and permanent residents, who ought not to be evicted beyond the scope of Law.

consideration all these aspects, the Applicants seek to Review the said order and the order of Status Quo granted by the Hon'ble Supreme Court is to be extended and continued.

3. The 6th Respondent had filed a Reply Affidavit dated 01.04.2019, wherein it is *inter alia* stated as follows:

i) PWD/WRD is the absolute owner of the property till date and during 2015, about 408 encroachers were evicted and rehabilitated on the northern side of Elango Street, who were abutting the canal front and soon after the eviction of those 408 encroachers, there was a clear offset of about 40 feet from the canal front for the remaining structures on the southern side of Elango Street, which were considered as encroachments and located within the PWD boundary, though the disputed land was a notified slum by order dated 28.02.1973;

ii) After eviction, only an offset 40 feet is available from the canal front with the present encroachments and any structure constructed within the Government land will be called as encroachments and merely notifying an area as a slum cannot be construed as transfer of ownership of land from PWD to Tamil Nadu Slum Clearance Board;

iii) Since because no bio-metric survey was conducted for the people residing on the Southern side of Elango Street, they cannot be termed as non-encroachers on the basis of RTI enquiry. Although it was stated that the Applicants have been dwelling in the notified area, namely S.No.3961/3 of Govindasamy Nagar, no transfer of land has been done by PWD till date and therefore, they cannot dictate that PWD has no jurisdiction in the area. Finally, it was argued that there is no scope to review the earlier order and the Review Application is liable to be dismissed.

4. In the Counter Affidavit filed by the 10th Respondent, it is averred as under:

i) There is a material suppression of the order dated 11.02.2011 passed by the Hon'ble Supreme Court in SLP Nos.25401 to 25403 of 2009 and the Applicants, by filing a Review Application, is endeavouring to agitate beyond the grounds raised in W.P.No.31114 of 2017, which is contrary to the principle laid by this Court in the case of **D.Rajappa vs. State of Tamil Nadu**, reported in **2018 (3) CTC 122**;

ii) The Applicants have not filed any Title Deed, Patta or even a 'Letter of Allotment' from the Slum Clearance Board to show that they have any right over the Land and they claim Title solely on the basis of a purported notification of the area in question under the Act. Though Section 29 of the

Act gives protection to the Applicants from eviction, Section 33 of the Act debars persons from filing application under Chapter VII in respect of Government or any Local Body. The S.No.3961/3, in which the Applicants are stated to be in occupation belongs to PWD and is classified as a 'canal' as per the 'Town Land Survey Records' and as such, there is no protection under the Act to stay on the public land;

iii) Merely because the Encroachers / occupants have been there for a long time and there is a declaration by TNSCB as 'Slum', it cannot be said that such persons have acquired right much less an indestructible right beyond the ambit of the State to remove them. The requirement of Section 11 of the Act would be in operation, only when TNSCB is the owner of the land and is conducting eviction, but in the present case on hand, PWD is the land owning Department and has no obligation to issue notice under Section 11 of the Act;

iv) The Act does not envisage declaration of a Water body on public land as slum and one such notification issued was elaborately dealt with by the Hon'ble Full Bench of this Court in T.K.Shanmugam vs. State of Tamil Nadu, reported in (2015) 5 LW 397 (FB), holding that such areas cannot be alienated to anyone or by anyone. Since there is no error apparent on the face of the record, no Review Petition is maintainable and therefore, the present Application is liable to be dismissed.

v) The Hon'ble Supreme Court in its order dated 11.02.2011 passed in SLP Nos.25401 to 25403 of 2009 had directed the removal of all encroachers,

including the Applicants herein and the said order, having attained finality, ought to be implemented by all the authorities, civil and judicial, who shall act in aid of the Hon'ble Supreme Court (in terms of the Article 141 r/w 144 of the Constitution of India). Further, in case of some procedural lapses, the same will not render the order either null and void one or nugatory one, in the considered opinion of this Court.

vi) The Writ Petition in W.P.No.3273 of 2008 was initially not filed in the form of Public Interest Litigation and taking into account the ongoing problems of encroachments, the said Writ Petition was converted to be a PIL by this Court and after perusal of reports and inspections, it transpired that the 40 feet road occupied by the Applicants is a water Body, situated adjacent to the banks of the Buckingham Canal owned by PWD and it is an evident from all records that Elango Street is not an official road. Therefore, it is prayed that the present Review Petition is liable to be dismissed with exemplary costs.

5. The Learned counsel for the Applicants had submitted that when the Public Works Department has no control over the particular area and the area does not fall within their ambit, the action initiated by them, that too without issuing notice under Section 11 of the Act for evicting the Applicants is highly unsustainable and arbitrary in nature. He further submitted that the PWD Officials are colluding with the 10th Respondent to evict the Applicants from the said area so as to declare the same as a vacant land and to enable the 10th Respondent in taking possession of it. He submitted that the Fundamental

Rights of the Applicants cannot be simply taken away on the basis of a 'Private Interest Litigation' under the garb of 'Public Interest Litigation' initiated by the 10th Respondent. The Officials of PWD, under the wrong notion that the Applicants too form part of those 366 families, who had encroached the land of the PWD and subsequently, evicted and provided with an alternate accommodation in some other place, have been attempting to remove the Applicants from the place, which actually does not belong to the Public Works Department.

6. Per Contra / Conversely, the Learned Additional Advocate General for the Respondent Nos.1, 2, 4, 6 and 9 vehemently contended that though the Government had notified the area as slum as early as on 28.02.1973, considering the impossibility of providing the basic amenities, such as water, street light, road, etc., it was not fully handed over to the 'Slum Clearance Board' and as such, the property still vests with the PWD. The submission of the Applicants, that there is a collusion between the PWD Officials and the 10th Respondent, has been made in the vacuum or void without any iota of evidence to substantiate it. Though 408 encroachments were removed and rehabilitated, the Applicants, in guise of slum dwellers, have been continuously refusing the vacate from the said area and the Applicants, except the Government Order dated 28.02.1973, no other substantial piece of documents has been adduced on the side of the Applicants. It was further contended that all these aspects were considered in detail in the order sought to be reviewed and the

Applicants, in the guise of reviewing the order, has been endeavoring to re-agitate the entire issue once again, which is not sustainable and to be deprecated at the threshold.

7. The Learned Counsel for the 10th Respondent has pointed out that the sketch produced by the Applicants is not a public document, on the basis of a new document, no Review of the order can be sought for. Continuing further, the Hon'ble Supreme Court in the case of Sarvepalli Ramaiah (Died) vs. The District Collector [Civil Appeal No.7461 of 2009] decided on 14.03.2019, has clearly elicited that if an area is found to be a Water Body (even dried up or fallen into disuse) as per Revenue records, the State should protect it and the area should not be alienated at any cost. The relevant paragraph of the judgment is extracted below:

“31. The Single Bench as also the Division Bench of the High Court rightly held that it was well settled that poramboke (tank) cannot be alienated. No patta can be granted in respect of tanks and water bodies including those that might have dried up or fallen into disuse. The appellant and/or their predecessor in interest had not challenged the gazette notification of 3rd September, 1984 notifying the entire Survey No.234 at Tiruchanoor as “Peddacheruvu Poramboke” that is tank.

32. This Court has time and again emphasized the need to retain and restore water bodies and held that water bodies are inalienable. Land comprised in water bodies cannot be alienated to any person even if it is dry. Reference may be made to the judgments of this Court in: (1) *Susetha vs. State of Tamil Nadu*, reported in (2006) 6 SCC 543; (2) *M.C.Mehta (Badkhal and Surajkund Lakes Matter) vs. Union of India*, reported in (1997) 3 SCC 715 and (3) *Intellectuals Forum v. State of Andhra Pradesh*, reported in (2006) 3 SCC 549.”

8. It was further pointed out by the Learned Counsel for the 10th

Respondent that though the 6th Respondent had taken a stand that the

Applicants are encroachers for the last 11 years, owing to the ensuing election and extraneous political pressure, the 6th Respondent has suddenly changed its stand so as to espouse the cause of encroachers. As the area is a water Body, the Applicants have to be necessarily evicted from the place, on account of the fact that no encroachment on water Bodies can be regularized or permitted to be continued.

9. This Court has heard the Learned Counsel on either side and perused the material papers available on record, including various judgments relied upon by the respective parties.

10. The main argument canvassed by the Applicants is that the provisions of Section 11 of the Act has not been adhered to before commencing eviction of the Applicants. The Applicants, in support of their stand that it is notified slum, have strongly relied upon the Government's Notification dated 28.02.1973. Admittedly, the Applicants have no title to the property and from the pleadings, it could be seen that the Applicants are in the habit of approaching this Court and Apex Court frequently with the relief one after the other. On earlier occasions, they had come with the plea of grant of patta and thereafter, they sought a direction not to remove them from the place except under due process of law. Subsequently, they accepted to move to some other place, provided another place is allotted to them. Finally, a different stand was taken that the place in question does not fall within the purview of encroachment.

11. Section 11 of the Act stipulates as under:

"Power to declare any slum area to be a slum clearance area. -

1) Where the Government, on a report from the Board or the prescribed authority, or the local authority concerned or the State Housing Board or an officer authorized by the Government for this purpose are satisfied as respects any slum area that the most satisfactory method of dealing with the conditions in the area is the clearance of such area and the demolition of all the buildings in the area, they may, by notification, declare the area to be slum clearance area, that is to say, an area to be cleared of all buildings in accordance with the provisions of this Act:

Provided that before issuing such notification the Government shall call upon the owners of the land and buildings in such slum area to show cause why such declaration should not be made and after considering the cause, if any, shown by such owners, the Government may pass such orders as they may deem fit.

(2) Any part of the slum area or any building in the slum area which is not fit for human habitation or dangerous or injurious to safety, health or morals may be excluded from the notification under sub section (1) if the Government consider it necessary.

(3) The notification under sub-section (1) shall specify each of the buildings to be demolished and the area to be cleared."

12. A reading of the afore-stated Section makes it very clear that after

declaration of slum areas, it is the bounden duty of the Government to call for an opinion from the Land Owners of that area and also to find out whether the area is fit for accommodation of slum dwellers. In the counter affidavit, it is stated that the place lacks amenities like water, street light, etc and therefore, perhaps that might have been the reason for non declaration under

Section 11 of the Act. Merely because no declaration was made by the

Government, will the Applicants be automatically entitled to claim ownership?

13. Apart from introducing new grounds, from the existing grounds raised in this Review Application, it could be easily noticed that whatever averments made in the Writ Petition have been sought to be pressed into service once again in this Application. The Applicants, aggrieved by the order of this Court dated 19.02.2018, had approached the Hon'ble Supreme Court and subsequently, they withdrew the Special Leave Petition on 11.01.2019, by availing liberty to file a Review Petition before this Court.

14. It is an axiomatic principle in law that rehearing of matter on merits and re-appreciation of the arguments / pleas raised by the litigants in the original order is certainly impermissible under review. It is to be remembered that review cannot be heard as an appeal, even if the order is an erroneous one. The ambit of review passed in writ petition is very limited. That apart, for correcting an erroneous decision 'Review' does not lie.

15. First of all, it should be remembered that it is well settled that the scope of review is very minimal, as held by a Hon'ble Division Bench of this Court in the case of *The Special Officer, Kallal Co-operative Primary Agricultural and Rural Development Bank Ltd., Karaikudi, Sivagangai District vs. R.M.Rajaratnam and others [Review Application (MD)No.82 of 2013]* decided on 04.02.2015, by holding as under:

"10. From the records, it is seen that the review applicant did not contest the claim of the first respondent on merits in the writ petition. On the other hand, the learned counsel for the review applicant admitted the contentions of the first respondent. Based on the said admission only, an order was passed in the writ petition. The review application and the writ appeal filed by the review applicant herein were dismissed as not maintainable. W.A.(MD) No.502 of 2009 filed against the order dated 26.07.2007 passed in W.P.(MD) No.4636 of 2004, was dismissed by a Division Bench of this Court, holding that the review applicant is not entitled to agitate the issue on merits. *It is well settled that the scope of review is very limited. The review applicant cannot re-argue and he is not entitled for re-hearing on merits.*

11. The scope of review was considered by the Hon'ble Apex Court in a judgment reported in 2000 (6) SCC 224 [Lilli Thomas and Others Vs. Union of India and Others], wherein, in paragraph 52, it was held as under:

"52. The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement". It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi Vs. Pradyumansinghji Arjunsinghji [1971 (3) SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error."

(emphasis supplied)

12. A Division Bench of this Court in a judgment reported in 2014 (3) TLNJ 245 (Civil) [M.Jai Kavitha Vs. The Authorised Officer, Syndicate Bank, Regional Office, Chennai - 1 and others], in which, one of us [V.DHANAPALAN, J.] is a party, has considered the scope of judicial review, wherein the decision of the

Honourable Apex Court was noted with approval. Paragraph No.9 of the said Judgment reads as under:

"9. The power of review under Order 47 Rule 1 of CPC can be exercised by a court of law, if the order in question comprises a mistake or an error apparent on the face of record. Once an order is pronounced, it should not be altered, unless there is an apparent error. Law is well settled that erroneous finding is not a ground for review, so also improper consideration for that matter. In review application, the court does not sit in appeal over its own judgment and the said application cannot be treated as an appeal. This position has been ruled by the Supreme Court in Lily Thomas Vs. Union of India [2000 (6) SCC 224]. Therefore, in the absence of any error apparent on the face of record, we are not inclined to interfere with the order in question, except to the extent of deleting of the portions in paragraphs 14 and 15 of the impugned order, with which the applicant is concerned as to having an impact on the proceedings pending before the tribunal, as stated in the foregoing paragraph." (emphasis supplied)

16. Yet another Division Bench of this Court in B. Dhanalakshmi vs M.

Shajahan and Others, reported in AIR 2004 Madras 512, has opined that the power of review is not an appeal in disguise. The relevant paragraphs of the said order are given below:

"11. From the above judgments, it is seen that the law is well settled inasmuch as the power of review is available only when there is an error apparent on the face of the record and not on erroneous decision. If the parties aggrieved by the judgment on the ground that it is erroneous, remedy is only questioning the said order in appeal. The power of review under Order 47 Rule 1 C.P.C. may be opened inter alia only if there is a mistake or an error apparent on the face of the record. The said power cannot be exercised as is not permissible for an erroneous decision to be "reheard and corrected". A review application also cannot be allowed to be "an appeal in disguise". Similarly, the error apparent on the face of the record must be such an error, which must strike one on mere looking at record and would not require any long drawn process of reasoning on points, where there may conceivably be two opinions.

12. Based on the above principle of law, we are not inclined to accede to the contention of the review applicants insofar as the relief of review by placing reliance on the time taken by the appellants from the date of return of the copy

application and the date of filing the writ petition. Though the learned counsel for the review applicants Mr. R. Natesan and Mrs. Radha Gopalan may be correct in contending that while computing the period of limitation each day delay should be explained. The period taken by the appellants to file writ petitions also may have bearing in computing the period as the objectors cannot be allowed to take their own time to file writ petition. However, for the reasons as to our limited power of exercise of review our order in setting aside the grant on the ground that the revision petitions were maintainable, we are not inclined to review our order by adding the number of days taken by the writ appellants for filing the writ petitions after the copy application was received. As in that event, our order would be completely reversed."

17. It is pertinent to mention here that Review should not be heard as an appeal and even if the order is erroneous, it cannot be reviewed under Order 47 Rule 1 CPC. In that regard, the Hon'ble Kerala High Court in C.C.Sivaprasad vs. K.Sasidharan and another, reported in AIR 2006 Kerala 167 has been pleased to observe as under:

"9. It is clear from the impugned order of the learned Sub Judge that the application for review was considered as if it was an appeal. The learned Sub Judge has proceeded to rehear the application filed under Rule 90 of Order XXI afresh ignoring the limited power available under Order 47, Rule 1. No apparent error was evident in the impugned order dated 6-4-2002 which was reviewed by the learned Sub-Judge. Even if it is taken that the order dated 6-4-2002 was erroneous that will not enable the learned Sub Judge to review the order as if the petition was an appeal. From the records of the executing Court, it cannot be said that there was no settlement of proclamation, as has been found by the Court below. Even if it is taken that there was no settlement of proclamation, that will not itself enable the judgment debtor to get the sale set aside unless he could satisfy the Court that by such irregularity, substantial injury was sustained. The learned Sub Judge in the impugned order did not even consider the existence of a substantial injury and still reviewed the earlier order on the ground that there is an apparent error when there was no such apparent error. The learned Sub Judge was not correct in exercising the power of review when there was no glaring omission or patent mistake or

grave error that has crept in the order dated 6-4-2002. Even if the order was erroneous and could have been interfered in an appeal, that cannot be reviewed under Order 47, Rule 1 of the Code. On the facts and the records available, the finding of the learned Sub Judge is unsustainable. The order dated 6-4-2002 could not have been reviewed exercising the power under Order 47, Rule 1 on the grounds alleged."

18. Furthermore, this Court, in *R.Mohala vs. M.Siva and others* [Review Petition No.61 of 2018 and WMP No. 10818 and 10819 of 2018] decided on 25.04.2018, has elaborately discussed the scope of reviewing the order passed in the Writ Petition, by holding as under:

"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. Consequently, connected miscellaneous petitions are closed.

19. In the case in *Parsion Devi vs. Sumitri Devi*, reported in **1997 (8) SCC 715**, the Hon'ble Apex Court has reiterated the position with regard to review of an order as follows:

"Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC, it is not permissible for an erroneous decision to be "reheard and corrected". **A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."**

20. The Applicants, in the guise of slum dwellers, cannot claim ownership of the property and the slum, by any stretch of imagination, does not belong to these Applicants. Though it is the case of the Applicants that they have been residing in the property for more than four decades, the details, such as from where they acquired the property, who is the original owner of the property? etc. along with documents, like allotment order, sale

deeds, etc., have not been produced before this Court at the time of hearing the Writ Petition. Even if all those documents are produced now, all these aspects cannot be considered and perused in an Application filed for review, as the Court cannot rehear the matter afresh / *de novo*. The Hon'ble Supreme Court in the case of Ajit Kumar Rath vs. State of Orissa and Others, reported in 1999 (9) SCC 596, categorically held thus,

".....The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

21. In fact, in the order dated 19.02.2018, especially in Paragraph Nos.24 and 25, this Court had granted a better relief to the Applicants herein, which are extracted below for the sake of convenience:

"24. Considering the submissions of the respective parties and upon perusal of the counter affidavits / status report / report filed by the respective respondents, this Court is of the view that the petitioners are encroachers and they are not

entitled to reside / continue to occupy in the present place. It is open to the petitioners to take the alternative site provided by the Slum Clearance Board within a period of one month from the date of receipt of a copy of this order and occupy the place before 15th June 2018, as there is a possibility of the children of these encroachers, taking up examination in the months of March and April 2018.

25. Also, this Court makes it clear that, if no consent is given by any of the encroachers within the time stipulated supra, it is open to the concerned respondent to allot the site to some other person based on their seniority and that the petitioners cannot plead at a later date, that they have not been allotted alternative site. Further, this Court is of the view that there is suppression of facts by the violators, not only before this Court, but also before the Apex Court. However, taking note of the arguments advanced by the learned Junior Counsel in a pleasing manner, we are not inclined to impose any costs.”

22. According to the Applicants, 'Elango Street' has been formed by them and that the area belonging to the 10th Respondent had already been acquired by the Government and due compensation had also been paid to Tenth Respondent. The Tenth Respondent is alleged to have returned the money and thereafter, approached this Court by way of Writ Petition and take back the land. These averments were never raised in the Writ Petition and that the Government also did not whisper anything about this. According to the learned Additional Advocate General-V, the pleading raised hereinabove is a new ground and if it is found that the area of R10 is an encroached one and that the Government had already taken over, certainly, he would also be evicted from that place. Since it was not the subject matter of the Writ Petition or Review Petition, this Court do not want to express any opinion on that and it is for the Government to take steps in accordance with law.

23. At this stage, this court aptly points out that the well settled legal position is that 'Review' erases the order/judgment from an inception. In review, a Court of Law cannot rehear the matter De novo. Moreover, re-appraisal of the whole gamut of materials on record for unearthing an error/errors would amount to an exercise of appellate jurisdiction which is legally impermissible.

24. There is no second opinion of a prime fact that the 'Power of Review' is a creation of a statute. A mere fact that divergent/different views on the same subject are quite plausible/possible, it is not a ground to review the earlier order passed by a Court of Law. To put it precisely, the 'Power of Review' is not to be exercised for substituting the earlier views arrived at by the concerned Competent Court. An erroneous decision can be subject to an appeal to a Higher Forum. But, a review is impermissible on the ground that the Court of Law proceeded on a wrong proposition of law. Generally speaking, an error apparent on the face of record means that an error must be quite obvious and self evident and in short, it does require an elaborate argument to be established, as per decision of the Hon'ble Supreme Court in **Thungabhadra Industries Limited vs. The Government of A.P.**, reported in **1964 AIR 1372**.

25. This Court would like to emphasise here that during inspection and

scrutiny of Revenue records and documents from the Office of the Sub-Registrar, if it is found that R10 had encroached upon the Government land, then the liability shall at first be fastened on the Officials, besides showing them the doors, as they are only primarily responsible for remaining as mute / dumb spectators in respect of the purported claim of adverse possession of the 10th Respondent. Consequent to the concerned deviant / erring officials, being identified, necessary departmental action (including placing concerned under suspension), may be initiated against them for their acts of omission(s) and commission(s) like dereliction of duty, laissez-faire attitude, lack of devotion, integrity and misdemeanor / misconduct and if need be / situation so warrants, to impose major penalties as per rules and regulations, which may result in deprivation of terminal benefits and also such other legal actions in accordance with law to bring the issue to a logical conclusion.

26. In view of the upshot of aforesaid qualitative and quantitative discussions, having regard to the facts and circumstances of the present case, this Court finds no apparent error on the face of the order dated 19.02.2018 passed in W.P.No.31114 of 2017 by this Court, as the Applicants have failed to satisfy the three ingredients of Order 47 Rule 1 of C.P.C., necessitating review of the order so passed.

27. *In fine, this Review Application is dismissed.* Consequently, connected miscellaneous petitions are closed.

28. Before parting with this case, it is to be stated that in the Order under Review, dated 19.02.2018 passed by this Court in W.P.No.31114 of 2017, this Court had permitted the Applicants to take the alternate site provided by the Slum Clearance Board within one month and to occupy the place before 15.06.2018. Since the time granted by this Court had already expired and taking into account the fact that subsequently, the Applicants had approached the Hon'ble Apex Court by filing a Petition in SLP (Civil) Diary No.46442 of 2018, which was dismissed as withdrawn with liberty to the Applicants to file a Review Application before this Court, the time granted by this Court on 19.02.2018 for moving to the alternate site is hereby extended till 10.06.2019. It is made clear that in view of dismissal of this Application, there is no impediment for the Respondents to evict the Applicants herein after expiry of the period granted now. The Respondents are also entitled to seek Police protection at the time of eviction of the Applicants so as to avoid any untoward incident(s) to occur.

29. In the midst of argument in this Review Application, it was represented by the learned Standing Counsel for TNEB that pursuant to the direction issued by this Court during the pendency of the Writ Petition, the Electricity supply had been disconnected approximately ten months back, after

the examinations of the children of the Encroachers in April and May, 2018 and nearly a year has gone by since then. In view of the above submission, the Electricity already disconnected need not be restored, as there cannot be any Electricity Supply to encroached places. Though the Hon'ble Supreme Court had granted an order of Status Quo, it is pertinent to point out that there was no electricity connection, when the Hon'ble Supreme Court dismissed the Petition with liberty to the Applicants to approach this Court by way of Review, in view of the fact that the Electricity supply was disconnected even during compliance of the order in the Writ Petition itself and there was no supply in existence as on the date of dismissal of the Petition by the Apex Court.

[M.V.,J.] [S.V.N.,J.]
23.04.2019

Index:Yes
Internet:Yes
Speaking Order
ar/sgl

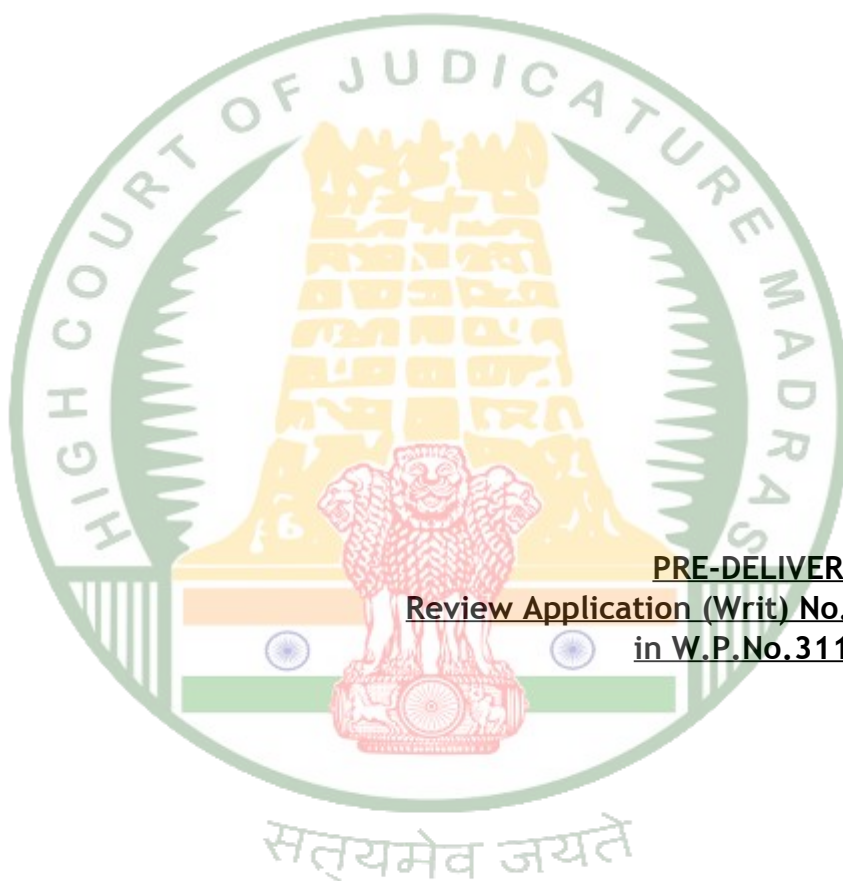
सत्यमेव जयते

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To:

1. The Secretary,
State of Tamilnadu
Department of Housing and Urban Development,
Fort St. George, Chennai-600 009.
2. The Secretary to Government,
State of Tamilnadu,
Public Works Department,
Fort St.George, Chennai-600 009.
3. The Chairman and The Managing Director,
Tamilnadu Slum Clearance Board,
Kamarajar Salai, Chennai-600 009.
4. The Collector of Chennai,
Rajaji Salai,
Chennai-600 001.
5. The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai-600 003.
6. The Executive Engineer, PWD,
(WRO) (Arainiyar Basic Division),
Chepauk, Chennai-600 005.
7. The Assistant Commissioner,
Zone-XIII, Chennai Corporation,
Dr.Muthulakshmi Road, Adayar,
Chennai-600 020.
8. The Executive Engineer,
Division-VI, Tamilnadu Slum Clearance Board,
Chennai-600 018.
Tamil Nadu.
9. The Tahsildar,
Mylapore Taluk,
Chennai-600 028,
Tamil Nadu.

M.VENUGOPAL, J.
and
S.VAIDYANATHAN, J.
ar/sgl



PRE-DELIVERY ORDER IN
Review Application (Writ) No.58 of 2019
in W.P.No.31114 of 2017

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