

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.03.2019

CORAM:

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

Review Application (Writ) No.59 of 2019
against W.P.No.34048 of 2018
and W.M.P.No.7646 of 2019
in Review Application (Writ) No.59 of 2019

S.Palani

... Petitioner

Vs.

- 1.The District Collector,
Collectorate Compound,
Kanchipuram District.
- 2.The District Revenue Officer,
Sriperumbudur Taluk,
Kanchipuram District.
- 3.The Revenue Divisional Officer,
Sriperumbudur,
Kanchipuram District.
- 4.The Tahsildar,
Pallavaram Taluk, Pallavaram,
Kanchipuram District.
- 5.The Executive Officer,
Town Panchayat Union,
Mangadu Town Panchayat Union,
Kanchipuram District.

6.The Inspector of Police,
T-14, Mangadu Police Station,
Mangadu, Chennai - 600 122.

... Respondents

Review Petition filed under Article 226 of the Constitution of India read with Order XLVII (1) and Section 114 of the Civil Procedure Code against the order dated 22.01.2019 made in W.P.No.34048 of 2018

For Review Applicant : Mr.M.Vijay Anand

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

ORDER

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The Review Applicant has filed the above Review Application to review the order passed in W.P.No.34048 of 2018, which was dismissed by this Court on 22.01.2019.

2.The Review Applicant filed the Writ Petition in W.P.No.34048 of 2018 for the following relief:

“To issue a Writ of mandamus forbearing the respondents from proceeding further in the process of construction in the property situated in Survey No.511, admeasuring 23.5 cents bearing Patta No.1125 at Mangadu Village, Kanchipuram District till the orders passed in the petitioner's representation dated 15.11.2018 as per the directions made in W.P.No.22326 of 2018.”

This Court, by order dated 22.01.2019, dismissed the above Writ Petition.

3. Earlier, the Review Applicant, along with two others, filed a Writ Petition in W.P.No.22326 of 2018 seeking for the following relief:

“To issue a Writ of Mandamus forbearing the respondents from proceeding further with the process of construction and eviction and consequently, direct them to follow the due process of law in dispossessing the petitioners from their property situated in Survey No.511 admeasuring 23.5 cents bearing Patta No.1125 at Mangadu Village, Kancheepuram District.”

3.1. The Division Bench of this Court, by order dated 14.09.2018, disposed of the Writ Petition by observing that the petitioners should not be evicted without due process of law and directed the respondents/ authorities to consider the case of the petitioners in accordance with law. Further, the Division Bench directed the respondents 1 to 5 therein to issue notice to the petitioners by way of an opportunity so as to enable them to submit their representation within a period of two weeks and also directed the respondents to consider the same and pass a detailed order within a period of four weeks thereafter. The Division Bench also gave liberty to the authorities to proceed against the petitioners, if they are held to be encroachers, in accordance with law by affording reasonable opportunity to them. Till the final orders are passed in the subject matter in issue, the petitioners' possession was protected by this Court.

4.From the order of the Division Bench of this Court dated 14.09.2018, it is clear that the petitioners should submit their representation within a period of two weeks and the authorities were directed to consider the same and pass orders within a period of four weeks thereafter. When this Court has specifically directed the petitioner to submit his reply within a period of two weeks, he submitted his reply only on 26.10.2018 seeking for two weeks time to produce necessary documents to prove his possession and enjoyment of the land. When the petitioner has filed the Writ Petitions in W.P.Nos.22326 of 2018 and 34048 of 2018 only to protect his possession, seeking for two weeks time for submitting documents to prove his possession, would only establish that his aim is to prolong the matter for an indefinite period. When the Division Bench of this Court by order dated 14.09.2018 directed the petitioner to submit his reply within a period of two weeks, he is not expected to give his reply at a belated stage and seek to protect his possession till the orders are passed in his representation dated 15.11.2018. The petitioner having not complied with the directions of this Court, cannot seek for any indulgence from this Court.

5. Even the Contempt Petition in Contempt Petition No.2311 of 2018 filed by the petitioner was also dismissed by the Division Bench of this Court on 11.12.2018 finding that the respondents therein had not committed any willful disobedience of the order passed in W.P.No.22326 of 2018.

6. The learned counsel appearing for the Review Applicant submitted that the Review Applicant on 26.10.2018 sought two weeks time to submit the documents to prove his possession, however, filed the Contempt Petition on 04.10.2018 itself.

7. On a perusal of the records in the Contempt Petition, it is clear that the Review Applicant has filed the Contempt Petition in Contempt Petition No.2311 of 2018 on 05.10.2018. However, the filing of the Contempt Petition on 05.10.2018 or any other date subsequent to 26.10.2018 is immaterial for deciding the Writ Petition. Even if the Contempt Petition was filed on 05.10.2018, the issue involved in the Writ Petition in W.P.No.34048 of 2018 was already decided in the earlier Writ Petition in W.P.No.22326 of 2018. The filing of the Contempt Petition prior to the reply given by the petitioner on 26.10.2018 shall not place the petitioner in an advantageous position. The Review Applicant having not succeeded in the Contempt Petition, filed the Writ Petition in

W.P.No.34048 of 2018 to circumvent the findings of the Division Bench in the Contempt Petition. The learned counsel for the Review Applicant submitted that the Review Applicant has also filed a Review Application in the Contempt Petition.

8.After the dismissal of the Contempt Petition, the Review Applicant has again filed the Writ Petition in W.P.No.34048 of 2018 seeking for the relief almost identical to the relief sought for in W.P.No.22326 of 2018. The issues involved in W.P.No.34048 of 2018 was already considered by a Division Bench of this Court in W.P.No.22326 of 2018. The Review Applicant cannot file, petition after petition for the very same relief. In the Writ Petition in W.P.No.34048 of 2018, the Review Applicant has only added that his possession should be protected till orders are passed in his representation dated 15.11.2018. Except this, the prayer in both the Writ Petitions are identical. The representation dated 15.11.2018 given by the Review Applicant is not in compliance of the order passed in W.P.No.22326 of 2018. The Review Applicant cannot take his own time to submit his reply and seek for a direction to protect his possession.

9.The learned counsel appearing for the Review Applicant relied upon a judgment reported in **2005 (5) CTC 487 [Rajender Singh Vs.**

Lt.Governor, Andaman & Nicobar Islands & others] wherein the Hon'ble Supreme Court held as follows:

“... ”

16.The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference.”

10.It is settled position of law that a Review Petition cannot be construed to be an appeal in disguise. Even in case of an erroneous decision also, review is not permissible to rehear the appeal. The judgment can be reviewed only if there is an error apparent on the face of the record as contemplated under Order 47 Rule 1 of the Code of Civil Procedure. The Review Applicant cannot re-argue the matter on merits and in such case, the remedy available to the Review Applicant is to file an appeal and not review, when the findings in the appeal are adverse to them. The review power may be exercised when some mistake or error apparent on the face of the record is found and the review power cannot be exercised on the

ground that decision was erroneous on merits. The review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure. An error on the face of the record must be such an error which must strike one on mere looking at the record and would require any long drawn process of reasoning on the points where there may be conceivable two opinions. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

10.1. In the judgment reported in *AIR 1995 Supreme Court 455 [Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury]*, the Hon'ble Supreme Court held that the Review Court cannot re-appreciate the entire evidence and reverse the finding of Appellate Court. Further, the finding given by the Appellate Court cannot be reviewed even though it was erroneous.

10.2. In the judgment reported in *AIR 2000 Supreme Court 1650 [Lily Thomas, etc. Vs. Union of India and others]*, the Apex Court held that the power of review can be exercised for correction of a mistake and

not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Further, once a review petition is dismissed, no further petition to review can be entertained.

10.3. In the judgment reported in 2006 (1) CTC 161 [*The Government of Tamil Nadu, represented by its Secretary, Backward Classes and Most Backward Classes Welfare (BCC) Department, Secretariat, Chennai-9 and another Vs. Registration Department SC/ST and M.B.C Employees' General Welfare Sangam, Pattinampakkam, Chennai-28 rep. by its General Secretary, Thiru.S.Balakrishnan and others*], a Division Bench of this Court held that the power of review cannot be exercised to seek review of judgment already delivered for purpose of rehearing and fresh decision. Further, the Division Bench held that under Order 47 Rule 1 of the Code of Civil Procedure "any other sufficient cause" must mean reason sufficient on grounds at least analogous to those specified in rule. Further, the power of review may be exercised on discovery of new and important matter and evidence which after exercise of due diligence was not within the knowledge of person seeking review or could not be produced by person seeking review.

10.4. In the judgment reported in **2006 (2) CTC 809 [L.Jegannath and another Vs. The Land Acquisition Officer & Revenue Divisional Officer, Palani and others]**, a Division Bench of this Court held that review petition cannot be allowed to be an appeal in disguise and it is not permissible for an erroneous decision to be reheard and corrected.

10.5. In the judgment reported in **AIR 2009 SC (Supp) 476 [State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.]**, the Apex Court held that an order or decision or judgment cannot be corrected merely because it is erroneous in law or on ground that a different view could have been taken by the Court on a point of fact or law. Further, the Apex Court held that the Court cannot sit in appeal over the judgment in a review application.

11. It is settled position that the Review Applicant cannot re-argue the matter on merits. The present Review Petition does not come within the purview of Order 47 Rule 1 of the Code of Civil Procedure warranting review of the judgment. Though there is no dispute with regard to the ratio laid down in the judgment relied upon by the learned counsel for the Review Applicant, since the facts and circumstances of the case are different, the said judgment is not applicable to the present case.

12.This Court is not sitting on appeal over the order passed by the Division Bench in the Contempt Petition in Contempt Petition No.2311 of 2018. Considering all these aspects, we have dismissed the Writ Petition in W.P.No.34048 of 2018.

13.In these circumstances, we find no error apparent on the face of the record to interfere with the order passed in W.P.No.34048 of 2018. In these circumstances, the Review Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Review Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes
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(V.K.T., C.J.) (M.D., J.)
सत्यमेव जयते 14.03.2019

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THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY,J.

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