

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/8/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Review Application No.145 of 2019

The District Collector
Tiruvallur
Tiruvallur District.

...

Applicant

Vs

1. M. Purushothaman
2. The Revenue Divisional Officer
Tiruvallur Taluk
Tiruvallur District.
3. The Tahsildar
Tiruvallur Taluk
Tiruvallur District.
4. The Assistant Director (Mines)
Tiruvallur District.
5. The Executive Engineer
Water Resources (Tank)
Public Works Department
Tiruvallur District.

6. G. Kumar

...

Respondents

Prayer Review Application filed under Order 47 Rule 1 of CPC to review the order made in W.P.No.18872 of 2017, dated 22/2/2019.

For applicant

... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 to 3.

J U D G M E N T

(Judgment of the Court was made by S.Manikumar,J)

Instant Review application is filed to review the order made in W.P.No.18872 of 2017, dated 22/2/2019, on the following grounds:-

(i). Amendment issued vide G.O.Ms.No.50, Industries (MMC.1) Department, dated 27/4/2017 pertains more so, in so far as to amending Rule 12 (2) to the effect of introducing Rule 12 (2) (a) & (b). By Rule 12 (2) (a), a list is prepared by the Public Works Department or the Rural Development and Panchayat Raj Department of the tanks, channels and reservoirs, excepting for the Districts of Chennai, Kancheepuram and Tiruvallur. The said exercise is done for the purpose of removal of clay, silt, savudu and gravel for making pots or for bonafide domestic purpose or agricultural purpose.

(ii). Exclusion of three Districts, i.e, Chennai, Kancheepuram and Tiruvallur in the amended Rule 12 (2) (a) of the Tamil Nadu Minor Mineral Concession Rules, 1959 is for the purpose that the tanks, reservoirs, etc., those Districts will not fall within the list which is prepared for the purpose of permitting quarrying silt, clay, etc., for usage in pottery activities, agricultural and domestic purpose. The exclusion of these three Districts is only for the later purposes and as such, the exclusion will not be applicable for quarrying activities under Rule 12 (2-A) of Tamil Nadu Minor Mineral Concession Rules, 1959.

(iii). De-silting is an essential exercise done in order to preserve and promote the wealth and storage capacity of a water body. If de-silting under Rule 12 (2-A) is not carried out as envisaged in the Rule therein, the same would be detrimental and restrict the storage capacity of a water body. It was not the intention to exclude the above three Districts from the applicability of Rule 12 (2-A) of Tamil Nadu Minor Mineral Concession Rules, 1959, but only to exclude the same for the purpose of removal of silt for the domestic or agricultural or for pottery purposes.

(iv). Removal of silt for agricultural purposes will more so be required among the rural areas and as such in areas where there is less to none agricultural activities due to urbanization, the exercise of giving permission for free removal of silt may also be misused and can amount to uncontrollable exploitation of water body in the guise of domestic and agricultural purpose.

2. On the above grounds, Mr.E.Manoharan, learned Additional Government Pleader made submissions. He also submitted that Government have taken steps to amend G.O.Ms.No.50, Industries (MCC.1) Department, dated 27/4/2017.

3. Heard Mr.E.Manoharan, learned Additional Government Pleader and perused the materials available on record.

4. Review of an order can be made only on the grounds envisaged in Order XLVII Rule 1 of the Code of Civil Procedure, which are applicable to writ proceedings as well, and the same reads thus:-

“Application for review of judgment -(1) Any person considering himself aggrieved

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred

(b). by a decree or order from which no appeal is allowed,

or

(c). by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

5. Section 114 of the Code of Civil Procedure deals with Review and the same reads thus:

"Subject as aforesaid, any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court make such order thereon as it thinks fit.

6. Some of the decisions, on the aspect of the scope of review, are as follows:

(i) In **Aribam Tuleshwar Sharma v. Aibam Pishak Sharma**

reported in **AIR 1979 SC 1047**, the Supreme Court held that,

"there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

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(ii) In **Union of India v. Kamal Sengupta** reported in **2008 (8)**

SCC 612, the Supreme Court, at Paragraphs 14 and 15, held that,

"14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito justitiae. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of

fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision."

7. Once this Court has already considered the averments with reference to the statutory provisions, the only course is to file an appeal. Reference can be made to a decision in **Kamlesh Verma v. Mayawati and Others**, reported in **AIR 2013 SC 3301**, the Apex Court held:

"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 if there is an error apparent on the face of the 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.... सत्यमेव जयते

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII 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. Having regard to the settled principles of law extracted supra and the grounds of review and also taking note of the submission of the learned Additional Government Pleader that Government have taken steps to amend G.O.Ms.No.50, Industries (MCC.1) Department, dated 27/4/2017, we find that grounds of review raised in the review application No.145 of 2019, do not fall within the settled principles of law. Further, there is no error apparent on the face of the record. Accordingly, instant **Review Application is dismissed.**

(S.M.K.,J) (S.P.,J)
19th August 2019

mvs.

Index: Yes/no

Internet: yes/no

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To

1. The Revenue Divisional Officer

9/11

Tiruvallur Taluk
Tiruvallur District.

2. The Tahsildar
Tiruvallur Taluk
Tiruvallur District.
3. The Assistant Director (Mines)
Tiruvallur District.
4. The Executive Engineer
Water Resources (Tank)
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S.MANIKUMAR,J

A N D

Rev.Appln.No.145 of 2019

SUBRAMONIUM PRASAD,J

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