



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
31.10.2019	11.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.449 of 2010
and
Rev.Aplc. (MD) No.40 of 2010
in
S.A. (MD) No.497 of 2007

W.A. (MD) No.449 of 2010:

Cumbum Kottaiyaichuttri Veedugal
Kadaigal Katti Kudiyiruppor Nala Sangam
represented by its Secretary
K.N.Jeevanandham
17-A/19, Kambaraya Perumal Koil Street
Cumbum, Theni District ... Appellant/Petitioner

-vs-

- 1.State of Tamil Nadu
represented by its
Secretary to Government
Department of Tamil Development
and Culture and Hindu Religious
Endowment Department
Fort St.George, Chennai-600 009
- 2.The Secretary to Government
Revenue Department
Fort St.George, Chennai-600 009
- 3.The Commissioner
Hindu Religious and Charitable
Endowment Department
Nungambakkam High Road
Chennai-600 034



4.The Executive Officer
Arulmighu Kambaraya Perumal
and Kasi Viswanathar Koil
Cumbum, Theni District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 22.09.2008, passed in W.P.(MD) No.1634 of 2007, on the file of this Court.

Prayer in WP(MD). 1634/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, for issuance a Writ of certiorari, to call for the records relating to the impugned Government order passed in G.O. Ms.No. 103, dated 28/03/2006 and quash the same.

For Appellant : Mr.Veera Kathiravan, Senior Counsel
assisted by Mr.C.Jeganathan

For Respondents : Mr.S.Angappan
Government Advocate for R1 to R3
Mr.D.Jayam for R4

Rev.Aplc. (MD) No.40 of 2010:

Cumbum Kottaiyaichuttri Veedugal
Kadaigal Katti Kudiyiruppor Nala Sangam
represented by its Secretary
K.N.Jeevanandham
17-A/19, Kambaraya Perumal Koil Street
Cumbum, Theni District ... Appellant/Petitioner

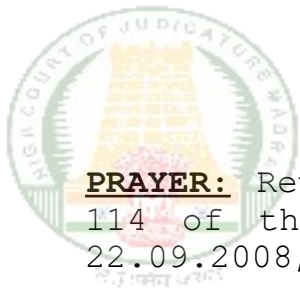
-vs-

1.Arulmighu Kambaraya Perumal
and Kasi Viswanathar Koil
through its Executive Officer
Cumbum
Theni District

2.The Cumbum Municipality
through its Commissioner
Cumbum

3.State of Tamilnadu through
its District Collector
Madurai

... Respondents/Respondents



PRAYER: Review Application filed under Order 47 Rule 1 r/w Section 114 of the Code of Civil Procedure, to review the order dated 22.09.2008, passed in S.A.(MD) No.497 of 2009.

Prayer in SA(MD). 497/ 2009 :

The Second Appeal filed Under Section 100 of Civil Procedure Code praying the Second Appeal against the Judgment and decree dated 31.08.2006 passed by the Sub Judge, uthamapalayam in A.S.No.14 of 2006 confirming the Judgment and decree dated 09.12.2005 passed by the District Munsif Court, Uthamapalayam in O.S.No.136 of 1996 for the following among other.

For Petitioner : Mr.Veera Kathiravan, Senior Counsel
assisted by Mr.C.Jeganathan

For Respondents : Mr.D.Jayam for R1
Mr.S.Angappan
Government Advocate for R2 & R3

C O M M O N J U D G M E N T

T.S.SIVAGNANAM, J.,

The writ appeal in W.A.(MD) No.449 of 2010 has been filed challenging the common order, dated 22.09.2008, passed in W.P.(MD) No.1634 of 2007.

2. By the above said common order, the second appeal in S.A.(MD) No.497 of 2007 was also dismissed and the appellant has filed the review application in Rev.Aplc.(MD) No.40 of 2010, to review the order dismissing the second appeal.

3. Pursuant to the administrative order passed on 06.08.2012, both the writ appeal and the review application were directed to be posted together.

4. The writ appellant filed W.P.(MD) No.1634 of 2007 for issuance of a writ of certiorari to quash the Government Order in G.O.(Ms) No.103, Tamil Development, Culture and Religious Endowment (R.E.II) Department, dated 28.03.2006. By the said order, the Government constituted a Rent Fixation Committee to fix fair rent to the properties belonging to Arulmigu Kambarayaperumal, Kasi Viswanathan and Gowmariamammal Temples (hereinafter, referred to as "the Temple"), at Cumbum, Uthamapalayam Taluk, Theni District, by invoking its power under Section 34 of the Hindu Religious and Charitable Endowments Act, 1959.



5. The review application has been filed to review the Judgment, dated 22.09.2008, passed in S.A.(MD) No.497 of 2007. The appellant filed a suit in O.S.No.136 of 1996, on the file of the District Munsif Court, Uthamapalayam, for a decree of permanent injunction to restrain the Executive Officer of the Temple / first defendant from enhancing the rent for the suit properties without following the instructions given in G.O.(Ms) No.59, Revenue Department, dated 06.01.1970, by the District Collector, Madurai / third defendant and without hearing the representations of the plaintiff (appellant) Sangam; to restrain the Executive Officer of the Temple / first defendant from evicting the members of the plaintiff (appellant) Sangam unlawfully from the suit properties till they are legally evicted under due process of law; to restrain the Executive Officer of the Temple / first defendant from disconnecting the amenities provided in the suit property, such as, electricity and municipal water connection; to restrain the District Collector, Madurai / third respondent from approving any enhancement in rent without following the instructions given in G.O.(Ms) No.59, Revenue Department, dated 06.01.1970, in respect of the suit properties and without hearing the members of the plaintiff (appellant) Sangam and to pass a Decree and Judgment of mandatory injunction directing the second defendant / Cumbum Municipality, represented by its Commissioner to levy property tax for the superstructure on the members of the plaintiff (appellant) Sangam.

6. By Judgment and Decree, dated 09.12.2005, the suit was dismissed, on the ground that already the plaintiff (appellant) Sangam had filed a writ petition before the High Court as against the Temple and the State for the similar prayer and having lost the writ petition and the writ appeal, they have no right to file a suit subsequently and the suit is barred by *res judicata* and hence, not maintainable. Aggrieved by the Judgment, the appellant preferred appeal in A.S.No.14 of 2006, on the file of the Sub Court, Uthamapalayam, which was dismissed by Judgment and Decree, dated 31.08.2006.

7. Aggrieved by the concurrent findings of the Courts below, the appellant filed S.A.(MD) No.497 of 2007, which was admitted on 28.02.2008 on two substantial questions of law, namely, whether the Judgment and Decree of the Courts below are perverse on account of its failure to consider the pleadings and the evidence adduced in the matter with reference to G.O.(Ms) No.59, dated 06.01.1970 and G.O.(Ms) No.1813, Revenue Department, dated 02.08.1978 and whether the Judgment and Decree of the Courts below are erroneous for the contention of the appellant having negatived the claim of the temple with regard to the construction of the superstructure by the Temple. By a common Judgment, dated 22.09.2008, the writ petition as well as the second appeal were dismissed.



8. The review application has been preferred by the appellant to review the Judgment in the second appeal contending that the second appeal ought not to have been dismissed on the ground that the proceedings are hit by constructive *res judicata*. It is contended that the dismissal of W.P.(MD) No.4223 of 2006 would not operate as *res judicata* as the scope of the two proceedings are wholly different. It is further contended that the Court ought to have held that Ex.B6, namely, the proceedings of the Commissioner of H.R. & C.E.Department is liable to be ignored on the ground that the said proceedings cannot override the Government Order. It is further contended that the Court ought to have seen that the Judgment and Decree of the Courts below are vitiated for having failed to correctly apply G.O.(Ms) No.59, dated 06.01.1970. Further, it is contended that when the evidentiary materials on record conclusively point to the ownership of the members of the appellant Sangam over the superstructure erected on the subject land, thereby entitling them to get the property assessed to tax, which aspect was not considered by the Court. Further, it is contended that the Court ought to have taken note that the powers of the Temple to levy fair rent is not relevant for adjudicating the issue on hand.

9. From the order sheet, we find that the review application was not admitted, but has been pending before the Court since 2010 and has been adjourned from time to time and by an order, dated 28.06.2012, the learned Single Bench directed the review application to be tagged along with W.A.(MD) No.449 of 2010, after obtaining orders from the Honourable Administrative Judge. Pursuant to which, the then Honourable Administrative Judge, on 06.08.2012, directed the review application to be tagged along with the writ appeal. This is how, both matters have been clubbed together and have been posted for hearing.

10. We have elaborately heard Mr.Veera Kathiravan, learned Senior Counsel, assisted by Mr.C.Jeganathan, learned counsel on record for the appellant / review petitioner; Mr.S.Angappan, learned Government Advocate, appearing for the respondents 1 to 3 in the writ appeal and respondents 2 and 3 in the review application and Mr.S.Jayam, learned counsel appearing for the fourth respondent in the writ appeal and first respondent in the review application.

11. The contention putforth in the writ appeal that the learned Writ Court ought to have noted that the Government Order impugned in the writ petition, namely, G.O.(Ms) No.103, dated 28.03.2006, is patently unreasonable and violative of Article 14 of the Constitution of India. Further, the said Government Order is not in consonance with the directions issued in the Government Order in G.O.(Ms) No.59, dated 06.01.1970, which specifically, states that the respondent Temple should obtain permission from the Government for enhancement of rent. Further, it is contended that



the superstructures were put up by the tenants themselves and therefore, neither the Temple nor the Government will have any title over the superstructures and therefore, levying of rent for the superstructures or permitting enhancement of the rent would be illegal and without jurisdiction. Further, it is contended that the Government Order impugned in the writ petition, namely, G.O.(Ms) No.103, dated 28.03.2006, is vitiated on the ground of violation of principles of natural justice as the appellant was not put on notice before issuance of the Government Order.

12. The sheet anchor of the arguments of the learned Senior Counsel rests upon the interpretation of G.O.(Ms) No.59, dated 06.01.1970 and how it should be construed and if properly construed, whether the Government could have passed G.O.(Ms) No.103, dated 28.03.2006, delegating the power for fixation of fair rent to the Commissioner of H.R. & C.E. Department, who in turn has constituted a Fair Rent Fixation Committee.

13. G.O.(Ms) No.59, dated 06.01.1970, came to be passed pursuant to the request made by the Temple Authorities of the subject Temple objecting to the assignment of the lands in Survey Nos.769 and 857 in favour of the tenants, who are in occupation of the site, which was stated to belong to the Temple. The Government examined the request of the Temple in consultation with the District Collector, Madurai and Board of Revenue and noted that the Temple has no other source of income apart from the rent it collects from the dwelling houses and shops and also the public sentiment in the town is overwhelmingly in favour of letting things be, as they are, and hence the Government considered that there is a case for assigning the land in favour of the Temple. Accordingly, a direction was issued and the lands comprised in Survey Nos.769 and 857, measuring 10.10 Acres be assigned to the respondent Temple subject to the following three conditions:

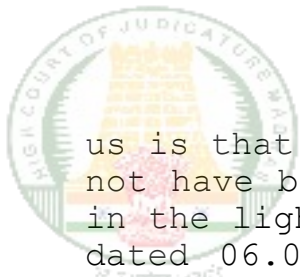
- "i. The rental to be fixed should be at the present level in respect of both the houses and shops;*
- ii. The temple authorities should not enhance the rent without the approval of the Government; and*
- iii. Though the temple authorities have every right to use the land for the purpose of the temple, its action in having permitted the person to construct house and shops is irregular and that if this condition regarding the pegging of rents with reference to government orders is not agreed to the Government would be at liberty to resume the land for assignment."*



14. In terms of the conditions imposed in the said Government Order, the rental to be fixed should be at the level, which was existing at the time when the Government Order was issued i.e. during 1970 in respect of both the houses and shops. There was an embargo placed on the Temple authorities not to enhance the rent without the approval of the Government. Further, the Government reserved its rights to resume the lands in the event of the contingency mentioned in Condition No.(iii) above.

15. It is the submission of the learned Senior Counsel that when the Government had specifically ordered that the Temple authorities cannot enhance the rent without approval of the Government, the Government Order in G.O.(Ms) No.103, dated 28.03.2006, could not have been issued empowering the Commissioner, H.R. & C.E. Department, to fix the fair rent and revise the same with effect from 01.11.2001. It is submitted that the Government cannot delegate such a power to the Commissioner, H.R. & C.E. Department, in the light of the specific orders contained in G.O. (Ms) No.59, dated 06.01.1970, by which, the lands in question were assigned to the respondent Temple. There is a reference to G.O.(Ms) No.353, Tamil Development, Culture and Religious Endowments Department, dated 04.06.1999, by which the Government revised the guidelines with regard to the lands, shops and houses, which belonged to the Temples under the control of H.R. & C.E. Department. There is a reference to a letter written to the Government by the Commissioner, H.R. & C.E. Department, dated 03.01.2005. This letter was addressed to the Government based on a report submitted by the Joint Commissioner, H.R. & C.E., Madurai, stating that the rent has to be revised in respect of the shops, houses and vacant sites, which are in existence in the said land and permission was sought for from the Government to do so by adopting the guidelines issued by the Government for fixing fair rent. The opinion of the Commissioner for Land Administration was sought for, who by letter dated 20.09.2005, stating that the request made by the Commissioner, H.R. & C.E. Department is well within the conditions contained in G.O.(Ms) No.59, dated 06.01.1970 and recommended to the Government that the genuine request of the Commissioner, H.R. & C.E. Department may be considered. The Government upon careful consideration of the materials decided to grant permission to the Commissioner, H.R. & C.E. Department, to fix rent / lease amount to revise the same with effect from 01.11.2007 in terms of the conditions mentioned in G.O. (Ms) No.59, dated 06.01.1970 and in terms of the guidelines issued by the Government in G.O.(Ms) No.353, dated 04.06.1999, by assigning the task to the Fair Rent Committee, for the properties owned by the respondent Temple.

16. The question, which falls for consideration is whether the Government Order, impugned in the writ petition, in G.O.(Ms) No.103, 28.03.2006, falls foul of the conditions imposed by the Government in G.O.(Ms) No.59, dated 06.01.1970. The argument before



us is that the power to fix the fair rent or increase the rent could not have been delegated to the Commissioner, H.R. & C.E. Department in the light of the specific conditions contained in G.O.(Ms) No.59, dated 06.01.1970. In the preceding paragraph, we have noted the three conditions in G.O.(Ms) No.59, dated 06.01.1970, of which, condition No.(ii) states that the Temple authorities should not enhance the rent without the approval of the Government. The Temple authorities would mean the Executive Officer of the Temple and it cannot be read to mean the Commissioner of H.R. & C.E. Department, who is the head of the Department in respect of the Temples, which fall within the purview of the Hindu Religious and Charitable Endowments Act. This is clear, because the request to assign the land was made by the Temple authorities and the Government took a decision on such a request, after consulting with the District Collector, Madurai. Therefore, it cannot be stated that the Commissioner, H.R. & C.E. Department, who is the Head of the Department, cannot seek for empowering him to fix fair rent or revise the rent in respect of the properties held by the Temple. It is not as if the Commissioner had *suo motu* taken action and directed revision of the rent, but, the Commissioner followed the procedure by addressing the Government requesting permission to fix fair rent / revise the rent in accordance with the guidelines issued by the Government in G.O.(Ms) No.353, dated 04.06.1999. This was considered by the Government and the Commissioner, H.R. & C.E. Department was empowered to follow the guidelines issued by the Government in G.O.(Ms) No.353, dated 04.06.1999 and fix fair rent, which will be done through a Committee constituted for such purpose in terms of the guidelines issued by the Government. Admittedly, the members of the appellant Sangam, in our opinion, were initially trespassers into the property now vested with the Temple. There is no document of title in favour of any of the members of the appellant Sangam. Therefore, the appellant Sangam has absolutely no right to object to the decision of the Government in issuing G.O.(Ms) No.103, dated 28.03.2006.

17. We are at a loss to understand as to why the Government, while passing G.O.(Ms) No.59, dated 06.01.1970, had to extend benefits to encroachers. Nevertheless, the Government in their wisdom had issued the said Government order. In the said Government Order, an embargo was placed on the Temple authorities not to enhance the rent without the approval of the Government. Therefore, necessarily, the Temple authorities had to approach their Head of the Department requesting appropriate permission. This has been properly done and the Joint Commissioner, H.R. & C.E. Department has submitted a report to the Commissioner, H.R. & C.E. Department, who in turn has addressed a letter to the Government and the Government, after taking note of the recommendations of the Commissioner of Land Administration, has passed G.O.(Ms) No.103, dated 28.03.2006.



18. It was argued before us that there is no power for the Government to delegate the power to fix or enhance the rent to the Commissioner of H.R. & C.E.Department. We find there is no such indication to show that there was an embargo on the Government not to delegate any of its powers to any competent authority. The Government Order in G.O.(Ms) No.59, dated 06.01.1970, cannot be read to give any such interpretation as argued before us by the appellant. All that the Government has stated is that the rent should not be enhanced without approval of the Government. Therefore, it would have been well within the jurisdiction of the Temple authorities to seek for a formal approval from the Government to enhance the rent. However, without doing so, the H.R. & C.E. Department has followed the proper procedures and addressed the Government. The Government having placed an embargo on the Temple authorities are well within their jurisdiction to permit enhancement of the rent. There is nothing in the Government Order to indicate that it is the Government, which will fix fair rent or enhance the rent. The land having been vested with the Temple, the Temple would be the competent person to collect and revise the rents, take action for eviction of the defaulters, violators of the conditions or any other mis-users. Thus, the argument putforth before us stating that the Government Order is not sustainable is wholly untenable and without any basis. Furthermore, the revision of rent / fixation of fair rent is in terms of the guidelines issued by the Government in G.O.(Ms) No.353, dated 04.06.1999, which was permitted to be done in G.O.(Ms) No.103, dated 28.03.2006. Therefore, we find that there is absolutely no error in the Government Order impugned in the writ petition.

19. The argument putforth before us that the appellant Sangam should have been heard before G.O.(Ms) No.103, dated 28.03.2006, was passed is not tenable for several reasons. Firstly, as pointed out, the appellant Sangam has no vested right to object to the manner in which the rent has to be revised. The decision to empower the H.R. & C.E. Department to follow G.O.(Ms) No.353, dated 04.06.1999, is an executive decision taken by the Government. That apart, the said decision is in consonance with the policy framed by the Government in G.O.(Ms) No.353, dated 04.06.1999, for fixing fair rent in respect of the properties owned by the Temples and religious endowments. The learned Writ Court has elaborately considered this aspect, taken note of the counter affidavit filed by the Government and rejected the prayer sought for in the writ petition. We find that there is no error in the order passed in the writ petition. Therefore, the writ appeal is liable to be dismissed.

20. Now, we move on to consider the review application in Rev.Aplc.(MD) No.40 of 2010.



21. It is settled legal principle that a review is not an appeal in disguise. A review applicant has to establish that there is an error apparent on the face of the Judgment and only if the applicant succeeds in doing so, the review jurisdiction can be exercised. A mere error is not a ground to invoke review jurisdiction. The error should be so apparent on the face of the Judgment and it would not require any long drawn reasoning to point out the error. In the preceding paragraphs, we have set out the grounds raised by the review applicant in the review petition. In none of the grounds, the petitioner has been able to point out any error, which is apparent on the face of the Judgment. The learned Single Bench, after referring to the substantial questions of law framed for consideration, has discussed elaborately as to how the concurrent findings recorded by the Courts below do not call for any interference. Thus, in the absence of any error in the Judgment and Decree passed in S.A.(MD) No.497 of 2007, we find no ground to review the said Judgment.

22. In the result,

- (a) the writ appeal in W.A.(MD) No.449 of 2010 is dismissed and the order dated 22.09.2008, passed in W.P.(MD) No.1634 of 2007, passed by the learned Single Bench, is confirmed;
- (b) the review application in Rev.Aplc.(MD) No.40 of 2010 is dismissed and the Judgment dated 22.09.2008, passed in S.A.(MD) No.497 of 2009, is confirmed.
- (c) No costs.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

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To:

- 1.The Secretary to Government,
Department of Tamil Development
and Culture and Hindu Religious
Endowment Department,
State of Tamil Nadu,
Fort St.George, Chennai-600 009.



2.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.

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3.The Commissioner,
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4.The Commissioner,
Cumbum Municipality,
Cumbum.

5.The District Collector,
State of Tamilnadu,
Madurai.

+1CC TO MR.VEERA ASSO. , Advocate Sr. No97614
+1CC TO MR.D.JEYAM, Advocate Sr. No. 97532

COMMON JUDGMENT

IN

W.A. (MD) No.449 of 2010

and

Rev.Aplc. (MD) No.40 of 2010

in

S.A. (MD) No.497 of 2007

11.11.2019

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