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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.01.2019

DELIVERED ON : 11.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

Review Application (MD)No.62 of 2018
and
W.M.P(MD)No.21474 of 2018
in
W.P(MD)No.22326 of 2017

A.Banu ... Petitioner/Petitioner

Vs.

1. The District Collector,
   Madurai District,
   Madurai.

2. The Revenue Divisional Officer cum
   Executive Magistrate,
   Madurai, Madurai District.

3. The Tahsildar,
   Madurai North Taluk,
   Madurai District.

4. The Executive Officer,
   Paravai Town Panchayat,
   Paravai, Madurai District.

5. The Revenue Inspector,
   Paravai Bit – II,
   Paravai, Madurai District.

6. S.Immanuvel ... Respondents

PRAYER: Petition filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure, against the order passed in W.P(MD) No.22326 of 2017, dated 23.11.2018.

Prayer in WP(MD). 22326/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the records on the file of the 4th Respondent in connection with theimpugned order of eviction passed by him vide his proceedings in Na.Ka.No.156/2017 dated

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24.11.2017 and quash the same as illegal and arbitrary in the light of the enquiry proceedings pending before the 2nd Respondent in Na.Ka.No.273/2017/M dated 23.01.2017 and consequently directing the 1st Respondent to take appropriate action against the Respondents 3 to 6 for their dereliction of duty and violation of due process of law.

For Petitioner : Mr.G.Thalaimutharasu

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader
for R.1 to R.3 and R.5

Mr.M.Rajarajan
Government Advocate for R.4

Mr.T.Arul for R.6

* * * * *

ORDER

This Review Application has been filed as against the order dated 23.11.2018 passed in W.P(MD)No.22326 of 2017, wherein the petitioner has sought for a writ of Certiorarified Mandamus to call for the records on the file of the fourth respondent in connection with the impugned order of eviction passed by him vide his proceedings in Na.Ka.No.156/2017, dated 24.11.2017 and quash the same as illegal and arbitrary in the light of the enquiry proceedings pending before the second respondent in Na.Ka.No.273/2017/M, dated 23.01.2017 and consequently, direct the first respondent to take appropriate action against the respondents 3 to 6 for their dereliction of duty and violation of due process of law."

2. This Court, by order dated 23.11.2018, while dismissing the writ petition filed by the petitioner in W.P(MD)No.22326 of 2017, in paragraph 8, has observed as follows:

"8. A careful perusal of the records would show that an enquiry was conducted by the fourth respondent and a peace committee meeting was also conducted and thereafter, a survey was also done which is evident from the materials placed before this Court. From the survey report, the fourth respondent has come to the conclusion that the sixth respondent as well as five other families have been using the land in question as a pathway for more than 40 years. But, the family of the petitioner, after purchasing the properties in S.Nos.242/19 and 242/22, tried to obliterate the said pathway by encroaching into the same. Considering all these aspects, the impugned order has been passed only in accordance with law and also by following the principles of natural justice. When that being the position, this Court cannot find any valid ground to set aside the impugned order. Therefore, we are not inclined to entertain this writ petition and accordingly, the same is liable to be dismissed."

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3. Aggrieved thereby, the present Review Application has been filed by the petitioner.

4. It is the main contention of the learned Counsel for the petitioner that the third respondent has not actually conducted any survey in regard to the disputed land in the presence of the petitioner and the sixth respondent, as per the resolution passed in the peace committee meeting dated 14.11.2017. If the third respondent surveyed the disputed land in the presence of the interested parties, certainly a detailed report would have been filed before this Court narrating the date and time of survey, length and width of the disputed land (lane) and also a copy of the survey intimation notice issued to the petitioner. Therefore, it is clear that the third respondent without conducting any survey on the disputed land, has filed a false report before this Court and hence, the order dated 23.11.2018, passed by this Court in W.P(MD)No.22326 of 2017, is liable to be reviewed by this Court.

5. Refuting the same, the learned Counsel for the sixth respondent contended that as per the resolution passed in the peace committee meeting dated 14.11.2017, a survey was conducted by the third respondent and based on the survey report, the fourth respondent has come to the conclusion that the the sixth respondent as well as five other families have been using the land in question as a pathway for more than 40 years.

6. We have heard the rival submissions and perused the materials available on record, including the order passed by us on 23.11.2018.

7. We are of the considered view that this Court, after analysing the materials available on record and taking into consideration the submissions made on either side, came to the conclusion that the order impugned in the wriit petition filed by the petitioner came to be passed only in accordance with law and also by following the principles of natural justice and thus, we found no ground to interfere with the same.

8. Further, we find no error apparent on the face of the order passed by us in the writ petition filed by the petitioner and thus, under the guise of reviewing the earlier order, the petitioner cannot be permitted to re-agitate the issue once again in the present review application. Moreover, we have already granted liberty to the petitioner to work out her remedy, if any, before the appropriate forum. Therefore, this review application fails.

9. In fine, this review application stands dismissed. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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+1cc to Mr.S.Sukumar, Advocate in SR.No. 46138

ORDER MADE IN
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and
W.M.P(MD)No.21474 of 2018
in
W.P(MD)No.22326 of 2017
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MSI-KK/05.03.2019-4P:7C

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