

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

Review Application No.232 of 2019
in
W.P.No.12354 of 2019

C.Suseela

.. Review Applicant

Vs.

The Sub Collector/Revenue Divisional Officer,
Mettur Dam, Salem District.

.. Respondent

Review Application filed under Order 47 Rule 1 of the Code of Civil Procedure, to review the order dated 05.09.2019 passed in W.P.No.12354 of 2019, on the file of this Court.

For Review Applicant : Mr.V.Vijay Shankar

For respondent : Mrs.Narmadha Sampath, Addl. Advocate General,
assisted by Mr.V.Shanmuga Sundar, Spl.G.P.

ORDER
(The Order of the Court was made by R.Subbiah, J)

The present Review Application is filed to review the order dated 05.09.2019 passed by this Court in W.P.No.12354 of 2019, in and by which, this

Court had observed and directed as follows:

"8. Heard both sides and perused the materials available on record.

9. Be that as it may. In cases where the father's Community Certificates were not cancelled, this Court, in many cases, had directed the authority concerned to issue provisional Community Certificate with endorsement on the same that the same is being issued based on the direction of this Court and thereafter, after confirmation by the State Level Scrutiny Committee, the permanent Community Certificate will be issued to the applicant. Insofar as the present case is concerned, the petitioner's mother is having Community Certificate and hence, the learned counsel for the petitioner prayed that even in cases where mother's Community Certificate had not been cancelled, a direction may be issued by the Court for issuance of Community Certificate to the children. In this regard, the learned counsel for the petitioner relied on a decision of the Supreme Court reported in 2012 (3) SCC 400 (Rameshbhai Dabhai Naika Vs. State of Gujarat), wherein the Apex Court held as follows:

"54. In view of the analysis of the earlier decisions and the discussion made above, the legal position that seems to emerge is that in an inter-caste marriage or a marriage between a tribal and a non-tribal the determination of the caste of the offspring is essentially a question of fact to be decided on the basis of the facts adduced in each case. The determination of caste of a person born of an inter-caste marriage or a marriage between a tribal and a non-tribal cannot be determined in complete disregard of attending facts of the case.

55. In an inter-caste marriage or a marriage between a tribal and a non-tribal there may be a *presumption* that the child has the caste of the father. This presumption may be stronger in the case where in the inter-caste marriage or a marriage between a tribal and a non-tribal the husband belongs to a forward caste. But by no means the presumption is conclusive or irrebuttable and it is open to the child of such marriage to lead evidence to show that he/she was brought up by the mother who belonged to the Scheduled Caste/Scheduled Tribe. By virtue of being the son of a forward caste father he did not have any advantageous start in life but on the contrary suffered the deprivations, indignities, humiliations and handicaps like any other member of the community to which his/her mother belonged. Additionally, that he was always treated as a member of the community to which her mother belonged not only by that community but by the people outside the community as well.

56. In the case in hand the tribal certificate has been taken away from the appellant without adverting to

any evidence and on the sole ground that he was the son of a Kshatriya father. The orders passed by the High Court and the Scrutiny Committee, therefore, cannot be sustained. The orders passed by the High Court and the Scrutiny Committee are, accordingly, set aside and the case is remitted to the Scrutiny Committee to take a fresh decision on the basis of the evidence that might be led by the two sides. It is made absolutely clear that this Court is not expressing any opinion on the merits of the case of the appellant or the private contesting respondent."

10. On a careful reading of the above judgment of the Supreme Court, it is seen that in cases where the mother's Community Certificate is available and not yet cancelled, there should be evidence available before the authority concerned to show that the child was brought up by the mother who belongs to ST community.

11. In such circumstances, this Court is not conducting any roving enquiry in this Writ Petition, and therefore, we are not inclined to accept the submission made by the learned counsel for the petitioner that based on the mother's Community Certificate, having not been cancelled, the child could be issued with Community Certificate.

12. Moreover, there is an alternative statutory remedy of appeal as against the impugned order. Hence, it is open for the petitioner to file appeal as against the impugned order, before the appropriate authority and in such event of filing of appeal, the concerned authority shall conduct enquiry only as to whether the children of the petitioner had been brought up by the petitioner-mother, and if really the children of the petitioner were brought up by the petitioner-mother, then provisional Community Certificates shall be issued to the children of the petitioner, and on such provisional Community Certificate, an endorsement shall be made therein to the effect that the same is subject to verification by the State Level Scrutiny Committee. After issuing such provisional Community Certificate, the authority concerned shall refer the same to the State Level Scrutiny Committee for testing its veracity and genuineness. If the said Committee finds that the said provisional Community issued to the petitioner's children, is genuine, then a permanent Community Certificate shall be issued to the children of the petitioner by the concerned authority.

13. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P. is closed."

2. Heard both sides and perused the materials available on record.

3. This Court, only after perusal of the records/files and applying the decision of the Supreme Court, had disposed of the abovesaid Writ Petition, with certain observations and directions as extracted supra.

4. Further, it is to be noted that to maintain a Review Application, it must be shown that there is error apparent on the face of the records and in the absence of the same, the Review Application, in our opinion, has been filed to re-argue and re-agitate the case, which was already considered by this Court while disposing of the Writ Petition itself. The grounds which are raised in the present Review Application have already been raised and considered by this Court in the Writ Petition. While so, the Review Application cannot be entertained.

5. In the above context, useful reference can be made to a decision of the Supreme Court in the case of *Kamlesh Verma vs. Mayawati and others*, reported in 2013 (8) SCC 320, wherein the Apex Court, after examining various judgments, had laid down the circumstances as to when the Court can review its own judgments. The relevant portion of the judgment of the Supreme Court is extracted as under:

"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 there is an error apparent on the face of record."

... ..

"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."

6. In the light of the above decision of the Supreme Court, we only wish to observe that if the Review Applicant is in any manner aggrieved by the order passed by this Court in the Writ Petition, it is well open to the Review Applicant/writ petitioner to file appeal before the Supreme Court and this Review Application is not maintainable. The Review Application is accordingly dismissed. No costs.

Index: Yes

Speaking Order: Yes

CS

(R.P.S.J)

(C.S.N.J)

05.02.2020

To

The Sub Collector/Revenue Divisional Officer,
Mettur Dam, Salem District.

सत्यमेव जयते
WEB COPY

R.SUBBIAH, J

and

C.SARAVANAN, J

CS



Rev.Appl.No.232 of 2019

in

W.P.No.12354 of 2019

WEB COPY

05.02.2020