

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Review Application No.5 of 2020

and

W.P.No.13886 of 2020

and

W.M.P.Nos.2034, 2036, 17255 & 17256 of 2020

Rev.Aplw.No.5 of 2020

- 1.K.R.P.Ramesh
- 2.K.S.Sakthivel
- 3.K.S.Palanisamy
- 4.Muthu Saradha
- 5.G.Kamala
- 6.P.Muthusamy
- 7.A.Radhakrishnan
- 8.M.Chandra
- 9.Elango
- 10.K.Kandasamy
- 11.K.Yuvaraj
- 12.Lakshmi

.. Applicants

-VS-

- 1.Amman Nagar - Narayana Nagar
Resident Welfare Association,
Rep., by President, K.Thangavel,
(Regn. No.36/2015),
1R2, Pattalathar Thottam,
Amman Nagar, Komarapalayam,
Namakkal District-638 183.
- 2.The District Collector,
Namakkal District,
Namakkal.
- 3.The Tahsildar,
Komarapalayam Taluk,
Namakkal District.
- 4.The Commissioner,
Komarapalayam Municipality,
Komarapalayam, Namakkal District.
- 5.The Assistant Executive Engineer,
Cauvery East Canal Irrigation Division,
Public Works Department, Ethirmedu,
Thattankuttai Village, Komarapalayam Taluk,
Namakkal District.
- 6.The Assistant Engineer,
Public Works Department,
Mettur Canal Division,
Komarapalayam, Namakkal District.
- 7.Sundararaj
- 8.Ganesan
- 9.Meiyappan
- 10.Anthonimuthu

11.M.Gandhamani
12.M.Danasekaran
13.R.Gurumurthy
14.A.Chinnasamy
15.K.Ramasamy Gounder
16.K.K.Mathivanan
17.S.Perumal
18.Vasanthagokilam
19.K.Thangavelu
20.Samburrani
21.Chandira

Respondents

Prayer :- Review Application filed under Order 47 Rule 1 read with Section 114 of Code of Civil Procedure to review the order dated 14.10.2019 made in W.P.No.3927 of 2017 and set aside the same.

For Applicants : Mr.D.R.Arun Kumar
For R1 : Mr.N.Manokaran
For RR2, 3 & 5 : Mr.M.Venkateswaran,
Government Counsel
For R4 : Mr.V.Jayaprakash &
Mr.G.Rajesh

W.P.No.15886 of 2020 :-

1.K.R.P.Ramesh
2.K.S.Sakthivel

3.K.S.Palanisamy
4.Muthu Saradha
5.G.Kamala
6.P.Muthusamy
7.A.Radhakrishnan
8.M.Chandra
9.Elango
10.K.Kandasamy
11.K.Yuvaraj
12.Lakshmi

... Petitioners

-VS-

- 1.The District Collector,
Namakkal District,
Namakkal.
- 2.The Tahsildar,
Komarapalayam Taluk,
Namakkal District.
- 3.The Commissioner,
Komarapalayam Municipality,
Komarapalayam, Namakkal District.
- 4.The Assistant Executive Engineer,
Cauvery East Canal Irrigation Division,
Public Works Department, Ethirmedu,
Thattankuttai Village, Komarapalayam Taluk,
Namakkal District.
- 5.Amman Nagar - Narayana Nagar
Resident Welfare Association,
Rep., by President, K.Thangavel,

(Regn. No.36/2015), 1R2, Pattalathar Thottam,
Amman Nagar, Komarapalayam,
Namakkal District-638 183.

.. Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the Warning Notice dated Nil made in Proceeding No.Nil jointly issued by respondents 2 to 4 and to quash the same.

For Petitioners : Mr.D.R.Arun Kumar
For RR1 to 3 : Mr.M.Venkateswaran,
Government Counsel
For R4 : Mr.V.Jayaprakash &
Mr.G.Rajesh
For R5 : Mr.N.Manokaran

COMMON ORDER

(Order of the Court was made by T.S.Sivagnanam, J.)

Review Application No.5 of 2020 has been filed by 12 persons, who were impleaded as respondents in W.P.No.3927 of 2017, to review the order dated 14.10.2019 made in the said writ petition.

2.The said writ petition was filed by an Association called Amman Nagar – Narayana Nagar Residents Welfare Association praying for issuance of a direction upon the official respondents to take action against the encroachers, who have illegally occupied the entire Mettur Branch Irrigation Canal and the adjoining Public Road comprised in S.F.Nos.83 to 85 and 102 of Komarapalayam Agraharam Village, Ward Nos.14 to 16 and restore the said Canal and Road to its original position, pursuant to the orders dated 15.06.2015 and 12.07.2016 passed by the Commissioner, Komarapalayam Municipality and the orders dated 26.02.2015, 09.04.2015, 05.05.2015 and 27.01.2016, passed by the Assistant Engineer, Public Works Department, Mettur Canal Division, Komarapalayam, Namakkal District.

3.The writ petition was tagged along with other connected matters and there have been various interim orders issued during the pendency of the writ petition and the matter was continuously being heard by the Hon'ble First Bench of this Court.

4.For the purpose of considering as to whether the review applicants, before us, have made out a case for review, it would suffice to note that the cause of action for filing the writ petition was alleging that the private respondents, 12 of whom are the review applicants, have encroached an Irrigation Canal. The Then Hon'ble First Bench, by order dated 04.09.2019, noted the main grievance expressed by the applicants before us, who were termed as the 'encroachers', stating that the authorities have conducted survey without issuing notice to the alleged encroachers. Therefore, they prayed for conducting a fresh survey, after giving notice to the alleged encroachers.

5.The Government Counsel submitted that the exercise can be re-done by the authorities, after putting the alleged encroachers on notice. The counsel, who appeared for the encroachers submitted that if any date is fixed for the survey, he would take notice on behalf of the alleged encroachers and on that day, the encroachers shall be present for conducting

the survey. This submission was noted and the learned Government Pleader requested that the survey may be fixed on 11.09.2019 at 10.30 am. Accordingly, a direction was issued directing the alleged encroachers, 12 of whom are the applicants before us, to be present on 11.09.2019 at 10.30 am for conducting a survey of the land in dispute. Further, it was also open to the applicants to submit all necessary documents to the authorities and in case, the authorities come to the conclusion that there are encroachments made by the alleged encroachers, it is open to them to proceed further for removal of the encroachments. The matter was directed to be listed on 19.09.2019 for filing a status report. Accordingly, a status report was filed on 14.10.2019 stating that the order and direction issued by the Hon'ble First Bench has been complied with, survey commenced on 11.09.2019 and went on for two full days and completed on 12.09.2019 and the encroachers were present at the time of survey and they have also acquainted themselves with the boundaries. The Survey Officials completed the survey work and submitted a report as per the old Ayacut and existing Town Survey Records. This report was placed before the Hon'ble First Bench and by order dated

14.10.2019, the writ petition was disposed of. The operative portion of the order reads as follows:-

“7. In view of the said consistent stand of the respondent Revenue Department, through the Tahsildar, it is clear that the private respondents in W.P.No.3927 of 2017 have encroached the respective lands of the survey numbers specified above in the prayer clause of the said writ petition.

8. However, the learned counsel for the private respondents in W.P.No.3927 of 2017, Mr.D.R.Arunkumar, and the learned counsel for the petitioners in W.P.Nos.11793, 11794, 11795, 12328, 12329, 31744, 31745, 31747, 31748, 31750, 31787 and 31788 of 2017, Mr.R.Marudhachalamurthy and Mr.C.Prabakaran, urged before us that even the members of the petitioner Association have encroached a part of the land in Survey No.219 of the said Village and page 278 of the report furnished earlier in the compilation of documents gives the details of the survey number and the extent of encroachment and the only submission made by them is that the public authorities should not pick and choose and remove the encroachments only of the private respondents in

W.P.No.3927 of 2017 and not that of the members of the petitioner Association.

9. Having heard the learned counsel for the parties and in view of the aforesaid Survey reports, we are of the opinion that obviously the respondent public authorities cannot discriminate or pick and choose either the private respondents in W.P.No.3927 of 2017 or the members of the petitioner Association for removal of the encroachments and whoever has encroached the public land is bound to be removed from the encroached portion. We, therefore, expect and direct the concerned public authorities to remove all the encroachments made by all the encroachers of the said survey numbers, irrespective of the fact whether they belong to the petitioner Association or they are private respondents in W.P.No.3927 of 2017.

10. The learned Government Pleader undertakes that within three months from today all the encroachments will be removed and a compliance report shall be filed in this Court.

11. Since the Survey Reports produced before us give the details of all the alleged encroachments, we

direct that all the encroachments be removed within a period of three months from today. A Compliance Report shall be filed in this Court by the learned Government Pleader and the Registry is directed to place the Compliance Report before us in Chambers for perusal after three months.

With these directions, these writ petitions are disposed of. No costs. Consequently, W.M.P.Nos.13095, 13096, 34892, 34893, 34895, 34896, 34898, 34928 and 34929 of 2017 and W.M.P.Nos.27710 and 27714 of 2019 are closed.”

6.The applicants filed Special Leave Petitions before the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.28659-28662 of 2019 challenging the order dated 14.10.2019. These petitions were disposed of by the Hon'ble Supreme Court, by order dated 09.12.2019. The order reads as follows:-

“The High Court, by its impugned judgment dated 14 October 2019, issued directions, based on two survey reports, for the removal of encroachments within a period of three months. Paragraph 8 of the

impugned judgment of Signature Not Verified the High Court records that the only submission which was urged on behalf of the private respondents before it, some of whom are the petitioners before this Court in the present proceedings, was that the public authorities should not pick and choose and remove encroachments only of the private respondents without dealing with the encroachments by the members of the association. The High Court answered this submission in paragraph 9 of the judgment by holding that it was not open to the respondent – public authorities to discriminate or to pick and choose between the members of the association and the private respondents before it. Hence, the High Court directed that whoever has encroached public land is bound to be removed from the encroached portion.

Mr Gopal Sankaranarayanan, learned senior counsel appearing on behalf of the petitioners, submits that the petitioners have a basic grievance in regard to the manner in which the survey was carried out by the Tahsildar since, according to the submission, no notice was given to registered holders of the land as required by the provisions of Sections 9 and 10 of the Tamil

Nadu Survey and Boundaries Act 1923. Mr Sankaranarayanan has made an effort during the course of the hearing to make a reference to some of the pleadings where substantive objections were raised.

We do not find from the impugned order of the High Court that any submission raising an objection to the survey was raised.

In this view of the matter, we deem it appropriate to grant liberty to the petitioners to move the High Court by way of a review. In the event that the petitioners do so within a period of one month from the receipt of a certified copy of this order, no coercive steps, in pursuance of the order of the High Court, shall be taken for a period of two months from today.

While we leave it open to the petitioners to bring to the notice of the High Court submissions which they have with regard to the legitimacy of their structures, we have not expressed any opinion thereon and it would be open to the High Court to take an appropriate view in the matter including on the maintainability of such a submission.

The petitioners would be at liberty to move this Court afresh, in the event they are aggrieved by the final order of the High Court.

The Special Leave Petitions are disposed of in the above terms.

Pending application, if any, stands disposed of.”

7.From the above order, it is seen that on behalf of the applicants, it was submitted that the survey was carried out by the Tahsildar without giving notice to the registered holders of the land, as required under Sections 9 and 10 of the Tamil Nadu Survey and Boundaries Act, 1923 and it appears that reference was made to certain pleadings to substantiate that the applicants have raised objections. The Hon'ble Supreme Court has observed that from the impugned order passed by the High Court, they do not find any submission raised objecting to the survey. Therefore, the Hon'ble Supreme Court held that it is appropriate to grant liberty to the applicants to move this Court by way of review application and this is how the applicants are before us. The review application has been filed within the time permitted by the Hon'ble Supreme Court, but was not listed on

account of change and constitution of the Division Bench. In the mean time, the authorities had issued a Warning Notice and the applicants have filed W.P.No.13886 of 2020 challenging the said notice in which, initially an order of *status quo* was granted on 28.09.2020, however, we find the *status quo* was not extended beyond 05.10.2020.

8.The following officers from the Department are present in Court and have produced the original files and given appropriate instruction to the learned Government Pleader:-

- (i) Mr.K.Vijaya Kumar,
Sub Inspector of Survey,
Komarapalayam Taluk Office;
- (ii) Mr.S.Murugesan,
Junior Engineer, WRD,
Mettur Canal Section, Komarapalayam;
- (iii) Mr.M.Murugan,
Village Administrative Officer,
Komarapalayam Agraharam; and
- (iv) Mr.M.Thangam,
Personal Assistant to R.D.O.,
Tiruchengode.
(Formerly Tahsildar, Komarapalayam)

9.It is submitted that totally there were 63 encroachers and the order and direction issued by the Hon'ble First Bench have been given effect to and 45 encroachers have been removed so far, and the remaining are 18 encroachers of whom, 12 are the review applicants before us. The remaining 6, we are informed, have filed Civil Suits and it is stated that there is no order of interim *injunction*. However, because of the re-constitution of the jurisdiction of the Civil Court, the matter is getting delayed. It is to be noted that the review applicants are all the occupants of the lands comprised in S.F.No.85. Thus, the grievance expressed before the Hon'ble Supreme Court was that no notice was issued to the review applicants before the survey was conducted. This submission appears to be factually incorrect.

10.We had mentioned about the order dated 04.09.2019 wherein, a submission was made before the Hon'ble First Bench alleging that no notice was issued before the survey was conducted. This submission was taken note of and the Hon'ble First Bench by order dated 04.09.2019, directed the

survey to be conducted on 11.09.2019. This was a consent order and the review applicants agreed to be present on the date of survey. The status report dated 14.10.2019, also confirms that the review applicants were present during the survey.

11.To be noted that the survey, which was directed to be conducted by the Hon'ble First Bench by its order dated 04.09.2019, is the third survey. The first of the survey was conducted between 31.05.2015 and 30.06.2016. The second survey was from 07.03.2017 to 27.03.2017 and the third as mentioned above, was conducted on 11.09.2019 and 12.09.2019. Therefore, it would not lie in the mouth of the review applicants to say that they had no opportunity or no notice of survey. Furthermore, the Hon'ble Supreme Court has also held that on perusal of the order passed by this Court, it was found that no submission was made raising an objection to the survey. Therefore, at this distance of time, the present attempt of the review applicants is to set up a new case alleging that notice ought to have been given in terms of the Tamil Nadu Survey and Boundaries Act, 1923.

12.As mentioned above, the order dated 04.09.2019 passed by the Hon'ble First Bench was a consent order and the review applicants accepted that no individual notices would be necessary and the date for survey was fixed by the Court on 11.09.2019 at 10.30. am. The said order has been given effect to and therefore, the present attempt of the review applicants cannot be entertained. Furthermore, the review applicants have failed to point out any error, which is apparent on the face of the order warranting exercise of review jurisdiction. That apart, the settled legal principle is that a review application is not an appeal in disguise. In fact, the liberty granted by the Hon'ble Supreme Court in the order dated 09.12.2019 was on the ground that the review applicants were not put on notice. This aspect has been examined by us and found to be incorrect, as the review applicants had notice of survey much prior to the date of survey and the date of survey was also fixed by an order passed by the Hon'ble First Bench. Furthermore, the contention, which is now placed before us, was not placed before the First Bench at the first instance, when the writ petitions were heard and disposed

of, but it is the submission which is now attempted to be raised in this review application. Furthermore, we find that the entire survey operations have been video graphed and this has been specifically stated in the status report and has not been disputed by the review applicants. Therefore, on the grounds raised by the review applicants, we do not find any error in the order passed by the Hon'ble First Bench for reviewing such an order. Accordingly, the review application fails and is dismissed.

13.In W.P.No.13886 of 2020, the petitioners have challenged the notice issued by the authority informing them that the encroachments are to be removed between 29.09.2020 and 30.09.2020 and therefore, the petitioners were advised to remove the encroachment before 28.09.2020. This was put to challenge by the petitioners in W.P.No.13886 of 2020. Initially, the Hon'ble Division Bench had granted an order of *status quo* on 28.09.2020, which was not extended beyond 05.10.2020.

14.The main ground on which the writ petition was filed is by stating that as against the order of the Hon'ble First Bench, the petitioners approached the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 09.12.2019 granted liberty to the petitioners to file a review application and Review Application No.5 of 2020 has been filed and the same is not listed and in the meantime, there is a threat of eviction. Taking note of the said submission, an *ex-parte* order of *status quo* was granted by the Division Bench on 28.09.2020 and directed the matter to be listed on 05.10.2020. On the said date, the Court has directed the writ petition to be tagged along with the review application, but the interim order was not extended.

15.We have, in the preceding paragraphs, held that there is no ground made out by the review applicants to review the order passed by the Hon'ble First Bench. Consequently, a separate challenge to a notice, which is consequence upon the direction issued by the Hon'ble First Bench cannot be entertained. For the above reason, W.P.No.13886 of 2020 is dismissed.

16.In the result,

(i) Review Application No.5 of 2020 is dismissed holding that no ground has been made out by the review applicants to review the order passed by the Hon'ble First Bench dated 14.10.2019; and

(ii) W.P.No.13886 of 2020 is also dismissed holding that a separate challenge to a notice, which is in furtherance to the direction issued by the Hon'ble First Bench cannot be entertained. No costs. Consequently, connected miscellaneous petitions are closed.

(T.S.S., J.) (C.S.N., J.)
03.09.2021

Index: Yes/ No
Speaking Order : Yes/ No

abr

To

1.The District Collector,
Namakkal District, Namakkal.

2.The Tahsildar,
Komarapalayam Taluk,
Namakkal District.

T.S.Sivagnanam, J.
and
C.Saravanan, J.

abr

3.The Commissioner,
Komarapalayam Municipality,
Komarapalayam, Namakkal District.

4.The Assistant Executive Engineer,
Cauvery East Canal Irrigation Division,
Public Works Department, Ethirmedu,
Thattankuttai Village, Komarapalayam Taluk,
Namakkal District.

5.The Assistant Engineer,
Public Works Department,
Mettur Canal Division,
Komarapalayam, Namakkal District.

Rev.Aplw.No.5 of 2020 &
W.P.No.13886 of 2020

सत्यमेव जयते

WEB COPY

03.09.2021