



Rev.Aplw.No.89 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

Review Application (Writ) No.89 of 2022

K.Chandrasekaran

.. Applicant

VS

1. The District Collector
District Collectorate Office
Palladam Road
Tiruppur.
2. The Tahsildar
Tahsildar Office
Avinashi Taluk – 641 654.
3. The Executive Officer
Eetiveerampalayam Panchayat
Tiruppur Taluk
Tiruppur – 641 666.
4. The Village Administrative Officer
Eetiveerampalayam Panchayat
Avinashi Taluk – 641 666.
5. Ayyavu

.. Respondents



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Prayer : Review Petition filed against the order dated 5.1.2022 passed in W.P.No.27555 of 2021.

For the Applicant	: Mr.Murugamanickam Senior Counsel for Ms.S.Akila
For the Respondents	: Mr.J.Ravindran Additional Advocate General assisted by Mr.A.Selvendran Special Government Pleader for respondents 1 to 4

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The review application has been filed to seek review of the order dated 5.1.2022 passed in W.P.No.27555 of 2021.

2. The order aforesaid was passed on a writ petition preferred by the review applicant seeking a direction on the respondent authorities to remove the encroachment made by the temple in S.No.376, classified as "Cart Track".



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3. The learned Single Judge dismissed the writ petition finding that the temple was constructed 20 years back by the local residents and many families worship at the temple and are doing daily pooja. It was also observed that as per the 'A' Register, the land in S.No.376 is classified as "Government Poramboke" - "Cart Track" and the cart track runs at Perumanallur – Nambiyur Road, with other district road, and that the temple is situated in the corner of the road without any hindrance to public passage.

4. Learned counsel appearing for the review applicant submits that the matter was heard on virtual mode, where he was not given access to the report submitted by the Government Pleader and otherwise it is without disposing of the application for impleadment of the State Highways Department, which has control over the State Highways and other roads as given under Section 3 of the Tamil Nadu Highways Act, 2001. It is the Highways Department which could have taken action in the matter to remove the encroachment made by the temple, but in the absence of their impleadment, the matter could not have been answered by the other departments



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and, therefore, it is submitted that the judgment in question deserves to be modified and the application for impleadment of State Highways Department be allowed and thereupon writ petition matter may be heard afresh.

5. It is further submitted that the writ petition was filed immediately after the rights settled in favour of the review applicant after partition of the ancestral property and as the review applicant is residing in the ancestral property, his rights are affected by the encroachment.

6. We have considered submissions made by learned counsel for the review applicant and perused the records.

7. Two grounds have been taken by the review applicant to seek review of the order dated 5.1.2022. The first issue is regarding a report submitted by the Government Pleader, a copy of which was not furnished to the review applicant. It could not be clarified as to why the petition was argued without asking for the



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copy of the report. We further find that the report has not affected the rights of the review applicant in any manner, rather it was to endorse that a cart track was carved out. The issue of encroachment was dealt with by the court thereupon and finding that the temple exists in the corner without causing any hindrance to the public passage, the writ petition was dismissed. The said finding has not been challenged and a challenge is made to the finding that the temple was constructed 20 years back. According to the review applicant, the temple was constructed five years back. The aforesaid issue would be taken into consideration after dealing with the second issue.

8. The second issue is regarding non-consideration of the application for impleadment of the State Highways Department before passing the impugned order. It could not be explained again as to why it was not brought to the notice of the court while arguing the writ petition that an application for impleadment is pending, with a request to decide such application first. There was no request to the court regarding the aforesaid and even otherwise



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that cannot be a ground because the review applicant knowing well that the State Highways Department would be relevant party, did not implead it while filing the writ petition.

9. In any case, the specific finding of the learned Single Judge is that the temple exists in the corner of the road without any hindrance to public passage. From a perusal of the photographs on record, the obstruction, as alleged on the cart track, is not made out.

10. The temple is said to have been constructed 20 years back and, according to the review applicant, it was constructed five years. The question would be why the review applicant did not immediately file a suit for injunction so as to stop the construction. The review applicant allowed the temple to raise the construction and when it was fully completed and the temple became operational, then after five years, filed a writ petition to remove it.

11. Learned counsel for the review applicant was specifically



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asked to explain as to why he or his ancestors did not take action to stop the construction, if raised by the temple obstructing the cart track. No reason could be given other than to say that the right of the review applicant got settled after the partition of the property. In that case, the ancestors of the review applicant should have filed a case and if they failed to do so, the review applicant cannot have a better right to justify the lapse. We, therefore, do not find it to be a bona fide litigation.

Finding no reason to entertain the review application, the same is dismissed. No costs.

(M.N.B., CJ.) (N.M., J.)
17.06.2022

Index : Yes/No
sasi



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N.MALA,J.

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