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Review Application (Writ) No.135 of 2021
in W.P.No.16720 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DURAI SWAMY
and
THE HON'BLE MRS. JUSTICE S.KANNAMMAL

Review Application (Writ) No.135 of 2021
in W.P.No.16720 of 2021
and W.M.P.Nos.20213 & 20215 of 2021 in
Review Application No.135 of 2021

1.G.Ettiyammal

2.B.Muniyammal

... Review Applicants

Vs.

1.The Principal Secretary to Government,
Highways and Minor Ports Department,
St.Fort George, Secretariat,
Chennai - 600 009.

2.The District Collector,
Thiruvallur District,
Thiruvallur.

3.The Project Director,
Tamil Nadu Road Sector Project,
No.17, Kesava Perumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.



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4.The Tahsildar,
Uthukottai Taluk,
Thiruvallur District.

5.The Director General,
Highways Department,
Integrated Chief Engineers Office,
No.76, Sardhar Patel Road,
Guindy, Chennai - 600 025.

6.The Chief Engineer,
Construction and Maintenance,
No.76, Sardhar Patel Road,
Guindy, Chennai - 600 025.

7.The Divisional Engineer,
Highways Construction and Maintenance,
Thiruvallur Division, Thiruvallur.

8.The Assistant Engineer (Highways),
Construction and Maintenance,
Gummidipoondi.

9.The President,
Aathuppakkam, Ellapuram Union,
Thiruvallur District - 601 102.

... Respondents

Review Application is filed under Order 47, Rule 1 read with Section 114 of Civil Procedure Code against the order dated 13.08.2021 made in W.P.No.16720 of 2021.

For Review Applicants : Mr.A.R.Suresh

For Respondents : Mrs.Geetha Thamarai Selvan,
Special Government Pleader (R1 to R8)



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ORDER

(Order of the Court made by M.Duraiswamy, J.)

The Writ Petitioners in W.P.No.16720 of 2021 have filed the above Review Application to review the order passed in the said Writ Petition on 13.08.2021.

2.The petitioners filed the Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondents, the impugned order, vide eviction notice issued by the 8th respondent in No.12/2020/AE/Encroachment/dated 21.06.2021 and Eviction notice No.12/2020/AE/Encroachment/dated 21.06.2021 and quash the same and to consequently direct the respondents 4 & 8 to conduct inquiry and investigate the entire encroachment from Uthukottai to Periyapalayam Road.

3.The petitioners challenged the eviction notice dated 21.06.2021 and the Division Bench of this Court, while dismissing the Writ Petition, observed that despite the earlier notices issued on 10.09.2020 and 23.09.2020, followed by the acceptance by the petitioners to remove the encroachment, they did not remove the encroachment as agreed. The Division Bench also observed that the issue involved in the Writ Petition was



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pending for more than two years and that the petitioners have filed a Civil suit in O.S.No.16 of 2020 on the file of the District Munsif Court, Uthukottai against the Tahsildar, Uthukottai and the 8th respondent herein. From the order passed in the Writ Petition, it could be seen that this Court had also passed an order in W.P.No.19781 of 2020 directing the authorities to remove the encroachment made by the petitioners. But due to the resistance of the petitioners, the authorities could not evict them from the encroached land.

4.It is also pertinent to note that the petitioners have suppressed the pendency of the Civil Suit in O.S.No.16 of 2020 in the affidavit filed in support of the Writ Petition. The only contention of the petitioners is that the land in question is a poramboke land and it does not belong to the Highways Department. The Division Bench, considered the case of the petitioners and also the undertaking given by them to vacate and handover the possession of the encroached land and dismissed the Writ Petition.

5.It is also pertinent to note that the counsel who had appeared for the Review Applicants in the Writ Petition has not filed the Review Application. By way of change of vakalat, the new counsel has filed the



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Review Application, which cannot be entertained by this Court in view of the judgment of the Hon'ble Supreme Court reported in **1997 - 2 - L.W. 326 (1) [M.Poornachandran & Anr. Vs. State of Tamil Nadu & Ors.]**, wherein the Hon'ble Supreme Court held as follows:

“The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The Review petition has been filed by Shri Prabir Chowdhary who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the Review Petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would be not in the interest of the profession to permit such practice. That part, he has not obtained “No Objection Certificate” from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the “No Objection Certificate” would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the “No Objection Certificate” from the erstwhile counsel has disentitled him to file the Review Petition. Even otherwise, the Review Petition has no merits. It is an attempt to reargue the matter.

On these grounds, we dismiss the Review Petition.”



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6.The ratio laid down by the Apex Court squarely applies to the case on hand.

7.As per Order 47 Rule 1 of the Code of Civil Procedure, unless there is an error apparent on the face of the record, the Review Application cannot be entertained. In the guise of Review Application, the Review Applicant cannot re-argue the matter. It is also settled position that the Review Application cannot be treated as an appeal in disguise. That apart, we do not find any error apparent on the face of the record warranting interference in the Review Application. The Review Application is devoid of merits and the same is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
va

[M.D.,J.] [S.K.,J.]
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**M. DURAISWAMY, J.
and
S.KANNAMMAL, J.**

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