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Rev.Aplw.Nos.179 and 180 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2022

DELIVERED ON : 07.04.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

Review Application (Writ) Nos. 179 and 180 of 2019
in W.P.No.12125 of 2013

- 1 S.Senthil Kumar
- 2 T.Ponraj
- 3 S.Ponnurangam
- 4 D.Saraswathi
- 5 R.Malar
- 6 S.Abirami
- 7 Arumugam
- 8 D.Muniyammal
- 9 E.Mariyappan
- 10 K.Dilli Kumari
- 11 R.Ganesa Moorthy
- 12 M.Rajkumar
- 13 A.Manivannan
- 14 A.Sayed Mohammed
- 15 C.Vijaya
- 16 M.Krishnamoorthy
- 17 S.Jayanthi
- 18 R.Jayanthi
- 19 S.Selvi



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- 20 Elumalai
- 21 B.Sunil Kumar
- 22 D.Kalai Selvi
- 23 M.Korima
- 24 N.Rama Lakshmi
- 25 V.Masco
- 26 A.S.Sarkarai Beer Mohammed
- 27 Madhina Begam
- 28 P.Valarmathi
- 29 M.Vijaya
- 30 M.Vellaiyammal
- 31 A.V.Chinnadurai
- 32 R.Karthikeyan
- 33 D.Shanthi
- 34 R.Chandrasekar
- 35 B.Pushba
- 36 N.Bhavani Natarajan
- 37 Vasantha
- 38 S.Murugan
- 39 G.Kavitha
- 40 R.Arumugam
- 41 N.Ganapathy
- 42 S.Boopathy
- 43 E.Nambiraja
- 44 K.Sakthi
- 45 A.Ramesh
- 46 G.Moorthy
- 47 M.Sunitha Bheevi
- 48 N.Valliyammal
- 49 C Vimalaraj
- 50 M.Parishath
- 51 A.Hari Babu
- 52 G.P.Mohanraj
- 53 L.Varadhan
- 54 R.Suguna
- 55 A.Venmathi
- 56 R.Janakiraman
- 57 A.Thasarathan
- 58 S.Aushya



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- 59 R.Lakshmi
60 V.M.Sheela
61 R.Ravichandran
62 E.Saravanan
63 A.Padmanaban
64 S.Kalaiyarasi
65 P.Manimozhi
66 K.Venkatesan
67 Arunrajan
68 P.Sundaram
69 A.James
70 C.Davith Kumar
71 G.Thanikachalam
72 S.Aruna
73 M.Subramani
74 P.Elanchezhiyan
75 G.Sooriyamoorthy
76 G.Radha
77 K.Amudha
78 V.Shankar
79 E.Kesavan
80 R.Reni
81 S.Gajalakshmi
82 S.Vijayakumari
83 S.Alamelu
84 P.Chinnaiah
85 Rathinammal
86 M.Samsmdeen Mohamed Irsath
87 Kannan
88 B.Vijayashanthi
89 M.Kamrushi
90 K.Karpagam
91 S.Mageswari
92 K.Gowri
93 M.Mariyammal
94 Madhan Kumar
95 G.Abbasali
96 S.Malarkodi
97 G.Murugan



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- 98 P.Ponmani
- 99 K.Chandrasekar
- 100 M.Selvi
- 101 S.Moorthy
- 102 C.Dhanasekaran
- 103 S.Savriyammal
- 104 S.Syed Abdul Rehuman
- 105 S.Gurusamy
- 106 K.Purushothaman
- 107 T.Poongodi
- 108 R.Jeyachandran
- 109 K.Ramalingam
- 110 M.Velu

.. Petitioners in
both review applications

Vs

- 1 I.H.Sekar
Managing Trustee of the Nature Trust
No.20, Dr.Nanjunda Rao Road
Injambakkam, Chennai-41.
- 2 The District Collector
Kancheepuram District
Collectorate Campus
Kancheepuram-631 501.
- 3 The Tahsildar
Sholinganallur Taluk, Sholinganallur
Kancheepuram Dist.
- 4 S.Adimoolam
- 5 D.Rajendran
- 6 A.Munusamy
- 7 A.Settu @ Raju
- 8 D.Balaji
- 9 D.Babu @ Pushpalingam
- 10 Munusamy
- 11 D.Selvam



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- 12 V.Selvam
13 M.M.Veerapathiran
14 V.Ganappan
15 S.Guna @ Gunasekaran
16 D.Sagayam
17 D.George
18 K.Ravi
19 C.Selvam
20 K.Mariappan
21 Gangatharan
22 A.Ranganathan
23 G.Annadurai
24 V.Appadurai
25 V.Annamalai
26 C.Chakrapani
27 M.Gajapathy
28 S.Karuna
29 K.Sivamani
30 K.Chinna Sadaiyandi
31 T.Desingh
32 D.Das
33 Sathish
34 P.Gandhirajan
- 35 Bethal Nagar Pathukappu Peravai
Rep by its President Viduthalai Chezhiyan
No. 935, 9th Street, Bethel Nagar(North)
Enjambakkam, Chennai-115.
- 36 The Chief Secretary
Government of Tamil Nadu
Ex-Officio Chair Person
State Disaster Management Authority
Fort St. George, Chennai-9.
- 37 The Commissioner of Land Administration
Land Administration Department
Ezhilagam, Chepauk, Chennai-5.



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38 The Principal Secretary to Government of Tamil Nadu
Revenue Department
Fort St. George, Secretariat
Chennai-9.

39 The Secretary to Government of Tamil Nadu
Public Works Department
Fort St. George,
Secretariat, Chennai-9.

.. Respondents in
both review applications

Prayer: Petitions under Order 47 Rule 1 read with Section 114 of the
Code of Civil Procedure to review the order dated 09.04.2015 and
28.02.2017, respectively, passed in W.P.No.12125 of 2013.

For the Petitioners : Mr.P.Vijendran

For the Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by
Mr.P.Muthukumar
State Government Pleader
Mrs.R.Anitha
Spl. Government Pleader
Mr.C.Harsha Raj
Addl. Government Pleader
for respondents 2, 3, 36 to 39



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COMMON ORDER

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THE CHIEF JUSTICE

Review Application No.179 of 2019 has been in reference to a judgment dated 9.4.2015 and Review Application No.180 of 2019 has been filed in reference to the order dated 28.2.2017. Both the orders have been passed in the same writ petition, being W.P.No.12125 of 2013.

2. The brief facts giving rise to the present review applications as could be culled out from the judgment dated 9.4.2015 are as under: The writ petition was preferred by the first respondent in these review applications to seek a direction on the official respondents to remove the encroachments made in marsh lands and canal poromboke areas in Survey Nos.281, 282, 283, 284 and 285 totally 156 acres at Injambakkam Village, Sozhinganallur Taluk, Kancheepuram District, complying the direction of the Apex Court made in *Hirch Lal Tiwari vs. Kamala Devi and others* reported at (2001) 6 SCC 496 and in accordance with the Tamil Nadu Land



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Encroachment Act, 1905.

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3. The writ petition aforesaid was disposed of by the court by its judgment dated 9.4.2015 referring to the survey numbers of the marsh lands and also narrating that all the lands in Survey Nos.281/1A1 to 281/3C belong to Government and are classified as cart track, grazing ground, kazhuveli, Buckingham Canal in revenue accounts. The court had also taken note of the fact that the land in Survey No.282/2 was originally classified as grazing ground poramboke in the revenue account and lies in the middle of the other fields and considering the government policy of granting house sites and regularisation in the grazing ground, encroachments took place by way of buildings and huts. The writ petition was thereupon disposed of with the direction contained in paragraph 4 of the order. It was in reference to the information collected by the petitioner/ first respondent in these cases. The directions given by the court in its judgment dated 9.4.2015 are as under:

"4.We are of the view that the following directions are liable to be issued:



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- 1.An enquiry be held in respect of the 'A' Register alteration to confirm the validity and authenticity of the alteration and in case the alteration is unauthorised, the same be restored to its original and action be taken against the defaulting officers.
- 2.Since the eviction of unauthorised occupants is stated to be a periodic exercise, a fresh exercise be undertaken in accordance with law, after notice to all concerned, to clear the land.
- 3.A status report be filed within two months qua the aforesaid with a proper site plan and photographs of the area.
- 4.The exercise be conducted by the first respondent/District Collector."

4. The official respondents were required to comply the directions within time frame. However, this court subsequently passed another order in the same writ petition on 28.2.2017 extending the period for compliance of the directions contained in the judgment dated 9.4.2015 by one year. While passing such order, this court noted the averment in the additional affidavit to the effect that the government will consider the



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regularisation/eviction depending upon the eligibility of the encroachers based on the survey to be conducted by the Indian Institute of Technology and the enquiry, to determine the eligibility.

5. At the outset, an objection has been raised on behalf of the official respondents to the maintainability of the review applications. It is stated that review of the judgment dated 9.4.2015 and the subsequent order dated 28.2.2017 has been sought by the review applicants, who are third parties, without seeking the leave of this court. It is further submitted that even if the objection aforesaid is ignored for the time being, the review applications are not maintainable having been preferred after the expiry of the period of limitation for maintaining them. No application for condonation of delay was filed by the applicants. In the light of the aforesaid, a prayer is made to dismiss both the review applications having been preferred beyond the period of limitation and without an application for condonation of delay.

6. Learned counsel for the review applicants submits that the



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writ petition was filed by the petitioner/first respondent herein after suppressing material facts. The writ petitioner/first respondent herein earlier filed a writ petition, being W.P.No.25426 of 2010, to seek a direction on the official respondents to remove the encroachment, to retrieve the same and use the land for welfare measures such as constructing children's park, playground, community hall, hospitals, gardens, etc. The said writ petition was disposed of by order dated 2.12.2010. A reference to the earlier writ petition was not made by the petitioner while filing W.P.No.12125 of 2013. A statement has further been made that another writ petition, being W.P.No.8342 of 2011, was filed by the same writ petitioner/first respondent herein to seek a direction to remove the encroachments from 27 tanks comprised in survey numbers given therein. The said writ petition was disposed of by order dated 1.4.2011 on the statement of the Government Pleader about filing of the earlier writ petition (W.P.No.25426 of 2010) for the same cause, though the subsequent writ petition was in reference to 27 tanks which was not subject matter of the earlier writ petition. It is further stated that the writ petitioner/first



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respondent herein purchased lands in the area concerned, but has not disclosed the same and, therefore, the he has not approached the court with clean hands. In view of the aforesaid, learned counsel for the review applicants submitted that W.P.No.12125 of 2013 ought to have been dismissed by this court, without issuing the directions as set out in the preceding paragraphs.

7. Learned counsel for the review applicants further submitted that W.P.No.12125 of 2013 should have been dismissed by the court in as much the review applicants were not made parties to the proceedings, though in the representative capacity few persons, who were not residing in the area, were impleaded as party respondents in the writ petition. The prayer in Review Application No.179 of 2019 is, accordingly, to review the judgment dated 9.4.2015. It is more so when the review applicants have put up constructions on the said land and are in occupation of the same for the last 20 years.

8. The other review application, being Review Application



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No.180 of 2019, has been filed to review the order dated 28.2.2017. The review is sought on the same grounds cited supra, however, additionally, a reference has been given of the orders passed by the government from time to time regarding reclassification/conversion of the land. Even reference of certain pattas issued has been given. It is submitted that all those facts have been suppressed by the writ petitioner/first respondent herein and, therefore, the prayer is to seek review of the order dated 28.2.2017.

9. We have considered the submissions made by learned counsel for the review applicants and learned Additional Advocate General appearing for the State, and perused the records.

10. The objection to the maintainability of the review applications has been raised as the review applications have been filed without seeking leave of the court to maintain it. It is for the reason that the review applicants were not parties to the writ petition decided vide the judgment dated 9.4.2015 and the



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subsequent order dated 28.2.2017. Learned counsel for the review applicants failed to give any explanation justifying the reasons for not seeking the leave of the court. Their submission is that since the review applicants are aggrieved by the orders sought to be reviewed and since they were not made parties to the writ petition, without maintaining an application to seek leave, the review applications have been filed and they are maintainable.

11. We are unable to accept the argument aforesaid. It is not that review application cannot be maintained by a person not a party to the litigation, but it can be after making an application to seek leave for maintaining the review application. The aforesaid procedure has not been complied by the review applicants. We, therefore, find force in the objection about the maintainability.

12. Even if the aforesaid objection is ignored, the second objection goes to the root of the case. It is not disputed by learned counsel for the review applicants that the review applications have been filed beyond the period of limitation, but the only clarification



given is that the review applicants were unaware of the judgment dated 9.4.2015 and the order dated 28.2.2017, thus, they could not file the review applications within the statutory period. However, learned counsel for the review applicants could not explain as to how the review applications would be maintainable without seeking condonation of delay in filing it. Reference of certain proceedings to seek recall of the order has also been given, but again counsel could not address the issue about the maintainability of the review applications without an application for condonation of delay. The review applications deserve to be dismissed on that score itself.

13. It is furthermore relevant to refer the direction given by this court in the judgment dated 9.4.2015 that has been quoted in the preceding paragraphs. The direction given by this court is to take steps as given in paragraph 4 of the said order. The direction of this Court is in reference to allegation of encroachment on marsh lands, grazing ground, etc., and for that first direction was to cause an enquiry in respect of 'A' Register alteration to confirm the validity and authenticity of the alteration and in case alteration was



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unauthorised, the land was to be restored to its original and action was directed to be taken against the officer. The other direction is regarding the exercise to be undertaken for removal of the encroachment in accordance with law, after causing notice to all concerned. Considering the fact that the list of encroachers is quite huge, this court directed that an opportunity of hearing should be given. We do not find any error apparent on the face of the record in the said directions.

14. The review applicants have however raised objection regarding the maintainability of the writ petition by stating that the dismissal of the earlier writ petitions has caused a bar for further litigation in the nature of public interest to seek a direction for removal of the encroachment. At this point in time, it needs to be emphasised that the writ petitioner/first respondent herein has given a reference to the earlier writ petitions filed by him, being W.P.No.11005 of 1991, W.P.No.25426 of 2010 and W.P.No.8342 of 2011, in paragraph (9) of the affidavit filed in support of W.P.No.12125 of 2013. Therefore, the allegation made by the



review applicants in reference to suppression of material facts, i.e., the filing earlier writ petitions by the writ petitioner/first respondent herein, does not hold water.

15. The jurisdiction of the court while hearing and deciding the review application is quite limited as has been held by the Apex Court in a series of decisions. In ***Kamlesh Verma v. Mayawati, (2013) 8 SCC 320***, the Apex Court summarised the principles as to when a review is maintainable and when it is not maintainable in the following words:

“20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- (ii) Mistake or error apparent on the face of the record;

Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in *Chhajju Ram v. Neki* [AIR 1922 PC 112] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius* [AIR



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1954 SC 526] to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principles have been reiterated in *Union of India v. Sandur Manganese & Iron Ores Ltd.* [(2013) 8 SCC 337]

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- (ii) Minor mistakes of inconsequential import.
- (iii) **Review proceedings cannot be equated with the original hearing of the case.**
- (iv) **Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.**
- (v) **A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.**
- (vi) The mere possibility of two views on the subject cannot be a ground for review.
- (vii) **The error apparent on the face of the record should not be an error which has to be fished out and searched.**
- (viii) **The appreciation of evidence on record is**



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fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

[emphasis supplied]

16. In view of the law enunciated in the decision cited supra and the reasons given herein above, we do not find any reason to review the judgment dated 9.4.2015 in the absence of an error apparent on the face of the order.

17. We now need to examine the review application in reference to the subsequent order dated 28.2.2017. The review applicants have given reference to certain facts to show that certain lands were purchased by them in rightful manner and pursuant to order passed by the District Collector to reclassify the land.

18. At this juncture, it needs to be noted that in the case on hand there has been no assignment of lands by the Government.



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As per RSO 21(6) of the Standing Orders of the Board of Revenue, the District Collector is not empowered to reclassify the land, as such authority vests with the State Government. Learned Additional Advocate General appearing for the side opposite has stated that the reclassification of land was not made by the government and, therefore, the pattas issued to few persons have been cancelled and the exercise of removal of encroachment has been initiated as per the orders passed by this court in the writ petition.

19. Even otherwise, the Apex Court in the case of ***Rameshbhai Virabhai Chaudhari v. The State of Gujarat***, [Civil Appeal No.5135 of 2021, dated 6.9.2021], which dealt with unauthorised encroachment on gauchar land, i.e., grazing land, held that the grazing land should be used only for the purpose for which it is permitted and no encroachment on such land is permissible. The relevant paragraphs of the said judgment are quoted hereunder:

"It is trite to say that gouchar land can be used



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only for purposes for which it is permitted to be used. If there is a user contrary to the permissible user, whether by the State or by any third party, the same cannot go on. Rehabilitation of persons is really not required in the present case as only three persons are entitled to an alternative site as per rules. There is of course some dispute whether the encroachers have made permanent structures or kuchha construction for keeping cattle but be that as it may, the user cannot be contrary to what is being permitted for gouchar land, which is a grazing land.

In view of the aforesaid, a direction is issued to bring the land in conformity with its use by the State Government taking appropriate action within a maximum period of three months from today."

[emphasis supplied]

20. It needs to be emphasised that grazing land belonging to the government cannot be allotted for any purpose whatsoever unless sanction in such regard is accorded by the State Government.



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21. On the issue of regularisation of illegal occupant of the government land, it is relevant to refer to the decision of the Apex Court in the case of ***Joginder v. State of Haryana, (2021) 3 SCC 300***, wherein it has been emphatically held as under:

"13. It is required to be noted that the persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization.

14. At this stage, the decision of this Court in the case of *Jagpal Singh v. State of Punjab, (2011) 11 SCC 396*, is required to be referred to. In the said decision, this Court had come down heavily upon such trespassers who have illegally encroached upon



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on the Gram Sabha/Gram Panchayat Land by using muscle powers/money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, this Court has observed that "such kind of blatant illegalities must not be condoned". ***It is further observed that "even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat". It is further observed that "regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village".*** Thereafter, this Court has issued the following directions:

'23. Before parting with this case, we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/ Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. ***For this purpose the Chief***



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Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.'

In view of the above also, the prayer of the Petitioners for regularization of their illegal occupation of the panchayat land cannot be



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accepted."

[emphasis supplied]

22. In the light of the law promulgated by the Apex Court in the decision cited supra and in view of the fact that the pattas issued in favour of few persons were subsequently cancelled and no challenge to cancellation of pattas was made, the official respondents are duty bound to ensure that the entire land belonging to the government is retrieved free from encroachment in compliance of the orders of this court. Taking aforesaid also into consideration, we do not find any ground to allow the review application, i.e., Review Application No.180 of 2019, even in reference to the order dated 28.2.2017.

For the foregoing reasons, Review Application Nos.179 and 180 of 2019 are dismissed. No costs.

(M.N.B., C.J.) (P.D.A., J.)
07.04.2022

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To:

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Kancheepuram District
Collectorate Campus
Kancheepuram-631 501.
- 2 The Tahsildar
Sholinganallur Taluk, Sholinganallur
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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESAVALU,J.

(sasi)

Review Application (Writ) Nos.179 and 180 of 2019

07.04.2022