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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Rev.Aplw.Nos.1 & 2 of 2019
in
W.P.No.16971 & 16972 o 2010
& Cont.P.Nos.1130 & 1131 of 2018
and
W.M.P.No.687 of 2019

1.The Chairman

Tamil Nadu Electricity Board

Now known as Tamil Nadu Generation and Distribution
Corporation Ltd.,

N.P.K.R.R. Maligai,

144, Anna Salai,

Chennai – 600 002.

2. The Superintending Engineer,

Civil Hydro Project,

Tamil Nadu Electricity Board,

Now known as Tamil Nadu Generation and Distribution
Corporation Ltd.,

Uratchikottai,

Bhavani – 638301.

... Petitioners in both Review Applications

Vs.

S.Devaraj

... Respondent in Rev.Apl.No.1 of 2019

S.Ramalingam

... Respondent in Rev.Apl.No.1 of 2019

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S.Ramalingam

... Petitioner in Cont.P.No.1130 of 2018

S.Devaraj

... Petitioner in Cont.P.No.1131 of 2018

Vs

1. Mr.Vikram Kapur,
The Chairman,
Tamil Nadu Electricity Board,
N.P.K.R.R.Maligai,
144, Anna Salai,
Chennai – 600 002.

2. Mr.R.Gopal,
The Superintending Engineer,
Civil Hydro Project
Tamil Nadu Electricity Board,
Uratchikottai,
Bhavani – 638 301.

... Respondents in both Contempt Petitions

Prayer in Rev.Appl.Nos.1 & 2 of 2019:- Review Application filed under Order 47 Rule 1 of CPC r/w Section 114 of C.P.C., pleaded to review the order dated 20.07.2017 in W.P.Nos.16971 & 16972 of 2010.

Prayer in Cont.P.Nos.1130 & 1131 of 2018:- Contempt Petition filed under Section 11 of contempt of Courts Act, pleaded to punish the respondents herein for their contempt willfully disobedience of the order dated 20.07.2017 made in W.P.Nos.16972 of 2010 & 16971 of 2010.

For Petitioners

: Mr.Anand Gopalan

(In both Review Applications)

Mr.M.Guruprasad

(In both contempt petitions)



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For Respondents

: Mr.M.Guruprasad

(In both Review Applications)

Mr.Anand Gopalan

(In both contempt petitions)

COMMON ORDER

Review Application No.1 of 2019 is filed against the order dated 20.07.2017 made in W.P.No.16971 of 2010 and Review Application No.2 of 2019 is filed against the order dated 20.07.2017 made in W.P.No.16972 of 2010.

2. The above Contempt Petitions are filed to punish the respondents for the wilful disobedience of the order dated 20.07.2017 made in W.P.Nos.16971 & 16972 of 2010 and the relevant portion of the order is extracted hereunder:-

“6. Upon consideration of rival submission of the counsels, this Court is of the view that earlier several directions have been issued by this Court in respect of similar claims in favour of the displaced land users and the said directions have also been complied with and several appointments have also taken place on the basis of the Rehabilitation



Scheme. Therefore, denying such benefit to these petitioners would amount to discrimination and their cases cannot be treated differently. In such view of the matter, this Court is of the view that the impugned orders, rejecting the claims of the petitioners, are liable to be interfered with.

7. Therefore, the impugned orders dated 11.05.2009 and 04.06.2009 stand quashed. The respondents are directed to offer employment to the petitioners or anyone of the eligible family members of the petitioners against suitable posts in the Board within a period of three months from the date of receipt of a copy of this order.

8. The writ petitions stand disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.”

3. The learned counsel for the Review Applicant submitted that subsequent to filing of the Contempt Petition, Review Application No.1 of 2019 in W.P.No.16971 of 2010 and Review Application No.2 of 2019 in W.P.No.16972 of 2010 were filed by the respondent. Initially, the Review Application was filed along with the condone delay petition to condone the delay of 143 days. Since there was some valid grounds raised in the Review



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Applications, the delay was condoned by this Court on 04.01.2019. The main ground taken by the petitioner in the contempt application is that the order dated 20.07.2017 was proceeded on the footing that the claim of the writ petitioner was similar to the claim made in W.P.No.31620 of 2016. The claim in W.P.No.31620 of 2016 pertains to different acquisition. The learned Judge in that order had only directed the Board to consider the representation of the petitioners therein and there was no positive direction to provide them employment. Then by proceedings dated 17.06.2002, it was agreed that the land owners would be entitled only for compensation and not for any employment. According to G.O.Ms.No.656 dated 29.06.1978 was adopted by the petitioners/respondents Board in B.P.Ms.No.24 dated 10.01.1980, only if the family of the land givers are affected, they would be entitled for employment.

4. The learned counsel would submit that the respondent/petitioner even today they are owning lands and carrying on their cultivation activities. Therefore, the acquired land is not only in the major source of the family for sustenance. Therefore, the order of this Court as well as the claim of the



respondent/petitioner is not tenable. The acquired land stood in the name of Samiyappan, son of Karuppana Gounder, who is the father of the petitioner herein. Only one member of the family of Samiyappan would be eligible to get employment. Therefore if at all, it is only the petitioner or his brother who can claim employment. Both these sons of Samiyappan cannot seek employment. In fact, even in the affidavits filed in support of the writ petitions, it has been averred that both the brothers have been jointly cultivating the land. In terms of the scheme formulated vide G.O.Ms.No.656 dated 29.06.1978, only one member of the family is eligible for employment.

5. The learned counsel further submitted that as and when lands are acquired, the families suffered sustenance because of such land acquisition and only one member of the family will be provided employment. This is only to protect such family and crisis in sustenance of their family. Even then, only one from the family will be provided with the employment namely self/wife/son/unmarried daughter/legally adopted son. But, the case of the petitioner does not aver terms of the G.O.Ms.No.656 and at the score, the claim of the respondents are not rationale. The respondent/petitioners are



claiming employment for each of them through parallel litigation before this Court while the compensation they receive at Rs.34,87,752/- is itself a major source to sustain their family.

6. The learned counsel further submitted that in terms of G.O.Ms.No.656 dated 29.06.1978 only the affected member of the family has to get employment. The family of the petitioners to the knowledge of the respondent Board, owned one acre of the land and 35 cents are remaining in the writ petitioners name. Further, they also own family agricultural land through various documents in the year 2014 and the said land has not been affected due to acquisition proceedings and even after the acquisition proceedings. Hence, the petitioners/respondents prays for review of the order dated 20.07.2017 in W.P.No.16971 of 2010 and W.P.No.16972 of 2010, by allowing the review applications.

7. The learned counsel appearing for the respondent/writ/contempt petitioner submitted that Section 114 of the Code of Civil Procedure provides for a substantive power of review by a Civil Court and consequently by the



Appellate Court. As Such, Sec.114 of C.P.C does not describe any limitation on the power of the Court. But such limitation has been provided for in Order 47, Rule 1 of CPC. The ground on which review can be sought are enumerated in Order 47 Rule, 1 CPC, which reads as follows:

“(1) Any person considering himself aggrieved.

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a



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review of judgment to the court which passed the decree or made the order.”

8. The learned counsel relied on the judgment of ***the Hon’ble Supreme Court in Lily Thomas Vs. Union of India reported in AIR 2000 SC 1650***, in which it was held that the power of review can only be exercised for correction of the mistake and not to substitute a view and that the power of review could only be exercised within the limits of statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise.

9. The Hon’ble Apex Court ***in the case of Gujarat University Vs Sonal P.Shah, AIR 1982 Guj 58***, held as follows:-

“(i) The provisions of Civil Procedure Code in Order 47 are not applicable to the High Court's power of review in proceedings under Article 226 of the Constitution.

(2) The said powers are to be exercised by the High Court only to prevent miscarriage of justice or to correct grave and palpable errors. (The epithet “palpable means that which can be felt by a simple



touch of the order and not which could be dugout after a long drawn-out process of argumentation and ratiocination)

(3) The inherent powers, though ex facie plenary, are not to be treated as unlimited or unabridged, but they are to be invoked on the grounds analogous to the grounds mentioned in Order 47, Rule 1; namely

- (i) discovery of new evidence,*
- (ii) existence of some mistake/error,*
- (iii) analogous ground.”*

10. The learned counsel appearing for the respondent/petitioner also relied on the cases:-

“(i). In the case of Moran Mar Basselios Catholicos Vs. Most Rev. Mar Poullose Athanasius reported in AIR 1954 SC 526.

(ii) In the case of Parsion Devi and others Vs. Sumitri Devi and others reported in 1997(8) SCC 715.

(iii) In the case of Thungabhadra Industries Ltd. Vs. Govt of A.P. Reported in AIR 1964 SC 1372.

(iv) In the case of Lily Thomas Vs. Union of India reported in AIR 2000 SC 1650.



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***(v) In the case of Haridas Das Vs. Usha Rani
Banik reported in 2006 4 SCC 78.***

***(vi) In the case of State of West Bengal Vs.
Kamal Sengupta reported in (2008) 8 SCC 612.”***

11. The learned counsel further submitted that it is evident that the review application has been drafted in such a way as a right to re-argue the entire case. Thus in such a case, petitioner ought to have filed an appeal against the said impugned order instead of approaching vide review application and it is just to camouflage the contempt proceedings initiated by the respondent/petitioner in respect of the order dated 20.07.2017 in W.P.No.16971 & 16972 of 2010.

12. The learned counsel further submitted that in the counter affidavit filed by the petitioners in Writ Petition No.16971 of 2010, there is no submission made by the petitioner Board regarding the terms of the agreement dated 17.06.2002 and now the petitioner Board are raising a new ground, which is not sustainable and not maintainable to be raised at this stage in the review application. The learned counsel further submitted that



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where the petitioners made an error in pinpointing the Hon'ble Court that the similar order in the impugned writ petition order dated 20.07.2018 are not cogent. In this connection, reference is drawn to paragraph 4 of this Court order dated 20.07.2007, wherein, the learned Judge has take a note of the order dated 03.10.2016 in W.P.No.3160 of 2016, wherein direction has been issued to the concerned TNEB Authorities to give employment inspite of the objections by the Board. Then it has started the practice of considering the appointment of the members of the families of the land owners. Thus, the fact remains that the petitioner now cannot say that there is an error to the order of this Court.

13. The learned counsel for the respondent/petitioner submitted that the review petitioner rejected the application as the respondent was not sponsored by the employment exchange vide order dated 04.06.2009 in P.R.No.19-1 of 2009 and now stating that the job could be allotted only to the genuinely affected person of the said land owners family as per the above mentioned G.O., and the above contention is absolutely devoid of merits.



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14. The learned counsel appearing for the respondent/petitioner further submitted that separate consent agreements have been entered between the petitioner Board and the respondent and his brother. Since the lands were separate and adjacent, it cannot be contended that both belong to the same family and no separate document has been given to the land owners. He would further submit that if at all these lands have to be considered, then the petitioners Board has to raise the same during the hearing of the writ petition and the same cannot be done by way of approaching this Court through review application.

15. With regard to the submission made by the learned counsel appearing for the petitioner that the respondent shall receive an amount of Rs.34,87,752/- as compensation and contended it to be a huge amount and need not be provided with any job opportunities is seriously condemnable and the petitioner shall put forth these submission only in a way prescribed by law and that too in a lawful manner. In regard to the ground that 65 cents of the land of the respondent was acquired and they have balance of 35 cents



to carry on with cultivation.

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16. The learned counsel would submit that the petitioners Board has no *locus standi* to make such comments and the petitioner ought to have restricted their submissions according to the extent they are aggrieved by the impugned order.

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

18. In this case, the lands were acquired by the petitioners Board from the respondents/petitioners namely S.Devaraj and S.Ramalingam who owned lands adjacent to each other and the same is situated in Resurvey No.1336/1,2 in Erode Village. The lands were cultivated jointly and severally by both the brothers and acquired in the year 2000 for the purpose of forming barrage. **In the proceedings dated 17.06.2002, it was agreed that the land owners would be entitled only for compensation and not for any employments.**

19. A reliance was placed on the G.O.Ms.No.656 dated



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29.06.1978 adopted by the petitioner/respondent Board in B.P.Ms.No.24 dated 10.01.1980. According to which, only if the family members of the land givers are affected they would be entitled for employment. In this case, it is an admitted fact that even today, the respondent/petitioner owned lands and carrying on their cultivation activity and the details of the land they owned are stated in Paragraph No.5 of the additional affidavit filed by the Review Applicant/Respondent which is extracted hereunder:-

“5. I further state that a family member of the land giver would be entitled to employment only if the acquisition of the land displaces the family and affects the livelihood. I state that the acquisition of the land has not in any manner affected the family of the petitioners/respondents. I state that totally one acre of land was available in Survey No.1336/1 & 2 with the family of the petitioners. I state that of this only 65 cents of this was acquired.”

20. It can be seen that the petitioner were not affected by the acquisition and the same can be inferred by the fact that the petitioner and his brother has acquired lands in the year 2013, 2014 & 2015. The



details of the purchase are given in Paragraph No.7 of the affidavit,
which is extracted follows:-

7. I further state that the family of the petitioner was not affected by the acquisition can also be inferred by the fact that the petitioner and his brother have acquired lands in 2013, 2014 and 2015. The details of the purchase are as follows:-

SL	Document Nos	Survey Nos	Value of land (Rs)
1	6599/2013	SF 1348/3	Rs.18,78,000/-
2	2059/2014	1250/3B	Rs.20,00,000/-
3	2460/2015	1339/1 1339/3 1339/4	Rs.1,63,500/-

21. It is also an admitted fact that the land acquisition stood in the name of Mr.Samiyappan son of Karuppanna Gounder, who is the father of the respondent/petitioner herein and only one member of the family would be eligible to get employment. Therefore, only one person can claim employment among the two and both cannot seek employment. The respondents/petitioners have also averred that both brothers have



been jointly cultivating the land and in terms of the G.O.Ms.No.656 dated 29.06.1979 only one member of the family is eligible for employment. The employment is given only to protect such family from crisis in sustenance of their family because of the land acquisition. Even then only one person is eligible for employment namely self/wife/son/unmarried daughter/legally adopted son.

22. The contention of the petitioner that the respondent/petitioner have received a sum of Rs.34,87,752.00/- itself is a major source to sustain their family and claiming employment to each of them through parallel litigation before this Court is untenable. The award of compensation was given to the land which was acquired and the employment is given to the family for their sustenance. G.O.Ms.No.656 dated 29.06.1978 provides that only if the livelihood of the family is affected, a member of the family is entitled to get employment. In this case, it is also an admitted fact that the respondent/petitioner had purchased agricultural lands through various documents. The claim of compensation and granting employment is applicable only for an immediate relief of loss of income



source and sustenance of life and in this case, the acquisition is of the year 2000 and the writ petition was filed in the year 2010 and the order passed in the year 2017. When the respondent/petitioner could survive for 15 years, there is no necessity to provide employment to them by the petitioner Board.

23. The learned counsel appearing for the review applicant drew the attention of the court to G.O.Ms.No.656, Labour and Employment Department dated 29.06.1978 and the relevant portion of the order is extracted hereunder:-

“2.(iii) The appointing authorities concerned of the respective Public Sector Undertakings etc. shall themselves as certain and decide whether the lands was the major source of sustenance of Family displaced from the land acquired, without insisting on production of any certificates from Revenue Authorities before recruitment is made.”

24. The learned counsel appearing for the review applicant also drew the attention of this Court to Memorandum No.22027/P.1/80-2 dated 04.11.1980 and the relevant portion of the Memorandum is extracted hereunder:-



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“In continuation of the orders issued in the Boards' Proceedings cited, the Tamilnadu Electricity Board hereby prescribes the conditions listed below in connection with providing employment opportunities to families displaced on account of acquisition of law.

(iv) The appointment shall be given to only one persons of the family displaced on account of acquisition of land for the project works, subject to the declaration by the head of the family that no other member of the family is employed anywhere else including private employment;

(v) The acquired land should have been the only or major source of sustenance for that family which fact should be certified by the Superintending Engineer concerned.”

25. The Memorandum in
Memo.S.E/D/C/EE/C/NMTS/F.L.A/MTTP/D.309/83 dated 31.05.1983, deals
with providing employment opportunities to one member in each family
whose lands are acquired/ alienated by Board for Power Project and the
relevant portion is extracted hereunder:-

“The acquired land should have been



the only or major source of sustenance for that family which fact should be certified by the Superintending Engineer concerned. (Amendment to condition VI) "Appointment shall be given to self or wife/husband/son/unmarried daughter, legally adopted son of the land owner". The above conditions may strictly be followed. The receipt of this memo may kindly be acknowledged."

26. From the above, it is crystal clear and evident that as per G.O.Ms.No.656, employment may be given to the family member only when the authorities decide that the lands acquired by the respondent Board was the major source of sustenance for the family members from whom the lands were acquired.

27. The learned counsel for the petitioner/respondent submitted that the judgment of the Hon'ble Supreme Court in the case of Gujarat University Vs. Sonal P.Shah, AIR 1982 Guj 58, wherein it is held that "the inherent powers, though *ex facie plenary*, are not to be treated as unlimited or unabridged, but they are to be invoked on the grounds



analogous to the grounds mentioned in Order 47, Rule 1; namely

- (i) discovery of new evidence,***
- (ii) existence of some mistake/error,***
- (iii) analogous ground.”***

28. In this case, ground No.1 is applicable to this case and in favour of the review applicant. Hence, this Court is of the considered view that the order passed by the learned Judge in W.P.No.16971 of 2010 and W.P.No.16972 of 2010 dated 20.07.2017, is to be reviewed to the extent that the paragraph 7 of the order directing the respondents to offering employment to both the petitioners or anyone of the eligible family as stated in paragraph 7 of the order is modified as under:-

“7. Therefore, the impugned orders dated 11.05.2009 and 04.06.2009 are sustainable in law. The petitioners are not eligible for claiming employment in the respondent Board.

29. In view of the modification in paragraph 7 of the order dated 20.07.2017, paragraph 8 of the said order is also modified as follows:-



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“ 8. In the result, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

30. In the result, the Review Application Nos.1 & 2 of 2019 stand allowed. In view of allowing the Review Applications, the Contempt Petition Nos.1130 & 1131 of 2018 are closed. Consequently, connected miscellaneous petition is closed.

13.04.2023

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Index : Yes/No

Speaking Order : Yes/No



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To:

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Tamil Nadu Electricity Board
Now known as Tamil Nadu Generation and Distribution
Corporation Ltd.,
N.P.K.R.R. Maligai,
144, Anna Salai,
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