



Rev.A.No.189 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs.JUSTICE N.MALA

Rev.Application.No.189 of 2018

in

W.P.16315 of 2018

and

W.M.P.No.36958 of 2018 and W.M.P.No.26730 of 2023

and

Contempt Petition No.2156 of 2023 & Sub.A.No.649 of 2023

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P.I.Ashokaraamasekar

.... Petitioner

VS

1. The Chairman-cum-District Magistrate,
Collectorate,
Revenue Department,
Puducherry.
2. The Tahsildar,
Villianur Taluk Office,
Villianur,
Puducherry.
3. The Secretary to Government,
Housing, Chief Secretariat,
Puducherry.



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4. The Chairman,
Puducherry Housing Board,
Puducherry.

5. The Secretary,
Puducherry Housing Board,
Puducherry.

...Respondents

Prayer: Review Application filed under Article 226 of the Constitution of India read with Order 47 Rule 1 Sec.114 of Civil Procedure Code to review the order passed by this Court in W.P.No.16315 of 2018 dated 02.11.2018.

For Petitioner : Mr.V.Ajayakumar

For Respondents : Mr.J.Kumaran,
Additional Government Pleader (Pondy)
and
Mr.S.Raveekumar, Govt. Pleader (Pondy)
for R1 to R3
Mr.T.P.Manoharan, Senior Counsel
for Mr.T.M.Naveen for R4 & R5

Contempt Petition No.2156 of 2023

P.I.Ashokaraamasekar

..Petitioner

Vs

V.Mahadevan,
Secretary (Additional Charge)
Puducherry Housing Board,
Puducherry.

..Respondent.

Prayer: Contempt Petition filed under Section 11 of the Contempt of Court Act 1976 to initiate contempt proceedings against the respondent for making a deliberate and false statement before this Court knowing fully well that it is a



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false statement in Rev.A.No.189/2018 in W.M.P.No.36958 of 2018 dated 7.8.2023

COMMON ORDER

(Order of the Court was made by N.MALA, J.)

The review petition is filed for reviewing the order dated 02.11.2018 passed in W.P.No.16315 of 2018 wherein the order of the 1st respondent dated 13.06.2018 cancelling the community certificate of the petitioner was confirmed.

2. The petitioner, a native of Puducherry belongs to Scheduled Caste Community. The petitioner was issued with the Scheduled Caste Community Certificate in the years 1985, 1988, 1990, 1992, 1994 & 1998. At the instance of certain persons inimical towards the petitioner in his office, the community certificate of the petitioner was cancelled by the 1st respondent vide order dated 13.06.2018. The petitioner, therefore, filed a writ petition challenging the said order. The writ petition was dismissed on 02.11.2018. Aggrieved by the order passed in the writ petition, the petitioner filed the review application and pending review application, the petitioner also preferred Special Leave Petition in S.L.P.No.3565/2019 which was dismissed by the Hon'ble



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Supreme Court on 08.02.2019. After the dismissal of the Special Leave Petition, the review petition has come up for hearing.

3. A preliminary objection was raised by the learned counsel for the respondent on the maintainability of the review petition. According to the respondent, when the SLP preferred by the petitioner was dismissed, the petitioner was barred from prosecuting the review application.

4. Learned counsel for the petitioner, on the other hand, submitted that as the SLP was dismissed without assigning any reason, there was no bar for the maintainability of the review petition. Learned counsel for the petitioner relied on the grounds of review and submitted that the review petition may be allowed and the order passed in the writ petition dated 02.11.2018 may be set aside.

5. We have heard both the learned counsels and we have perused the materials placed on record.

6. Against the order passed in the writ petition, the review petitioner



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preferred a SLP and the same was dismissed on 08.02.2019 by the following order.

"We find no reason to entertain this special leave petition, which is, accordingly, dismissed.

Pending application(s), if any, shall stand disposed of.

"

7. It is seen that the SLP was dismissed without assigning any reason and therefore, we find justification in the contention of the learned counsel for the review petitioner that the dismissal of the SLP cannot be a bar for entertaining the review petition moreso when the review petition was filed prior to the SLP. We are fortified in our view by the judgement of the Hon'ble Supreme Court reported in **2022(7) SCC 482**, in the case of ***State of Odisha v. Sulekh Chandra Pradhan & others***. The Hon'ble Supreme court in the said judgment held as follows:

38. That leaves us with the submission of Shri R. Balasubramanian, learned Senior Counsel that since the view taken by the Tribunal has been affirmed by the High Court and the special leave petition challenging the same has been dismissed, the view of the Tribunal has become final. In this respect, reliance could be



placed on the judgment of this Court in *Kunhayammed v. State of Kerala* [*Kunhayammed v.State of Kerala*, (2000) 6 SCC 359] , wherein this Court has held as under : (SCC pp. 377-78, para 27)

"27. A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order. *Whatever be the phraseology employed in the order of dismissal, if it is a non-speaking order i.e. it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141 of the Constitution for there is no law which has been declared.* If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the Apex Court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any



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view contrary to the one expressed by this Court. The order of the Supreme Court would mean that it has declared the law and in that light the case was considered not fit for grant of leave. The declaration of law will be governed by Article 141 but still, the case not being one where leave was granted, the doctrine of merger does not apply. The Court sometimes leaves the question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

39. It is thus clear that a mere dismissal of the special leave petition would not mean that the view of the High Court has been approved by this Court. As such, the contention in that regard is rejected.

8. In the light of the aforesaid Supreme Court judgment, we are of the view that the review petition is maintainable. It remains to be seen whether the petitioner has made out a case for reviewing the impugned order dated 02.11.2018. Before embarking on the merits of the review petition, the law on the subject is to be noted. The Division Bench of this Court in Review



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Application No.135/2022 dated 29.11.2022, to which one of us (Justice N.Mala) was a party, after referring to several Supreme Court Judgments, in paragraph No.11 held as follows:

11.From a reading of the above referred Judgments it can be fairly discerned that:

1.Review is not an appeal in disguise.

2.The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 C.P.C.

3.A wrong exposition of the law or a wrong application of the law and failure to apply the correct law cannot be a ground for review.

4.The power to review is a restricted power given to a Court to go through the Judgment only to correct it or improve it, on the basis of some material which ought to have been considered, escaped consideration or failed to be placed before it for any other reason, but not to substitute a fresh or a second Judgment.

5.The power of review cannot be invoked to correct the erroneous Judgment and the finality attached to a Judgment cannot be disturbed.

6.Only errors which are apparent on the face of the record in the sense that errors which strike on mere looking at record can only be corrected and not those that require long drawn process of reasoning on point.

12. The above are some of the basic principles on which the power to review rests.



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The said principles are not exhaustive but only illustrative.

9. As already stated, the fulcrum of the case in the writ petition as also in the review petition is whether the cancellation of the community certificate on the basis that the petitioner was not a resident of Puducherry at the time of the Presidential order is sustainable or not. The other grounds raised in the review application are akin to the aforesaid basic issue. We find that all the grounds raised in the review application were considered by this Court in the writ petition. It is pertinent to note here that the very same contention that the petitioner and his family members were natives of Puducherry was found to be factually incorrect on the basis of the materials placed by the respondents in the Writ Petition. The learned Judges found that the petitioner and his family members were natives of Vanur. To overcome this factual finding, the petitioner contended that as Puducherry was a Union Territory and administered by the President of India under Articles 239 & 239A of the Constitution of India, the Scheduled Castes persons of all States should have Scheduled caste status in Puducherry as Union Territory could not be equated to State. The Hon'ble Division Bench after referring to several Apex Court judgments and the constitutional provisions, rejected the said contention. We



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therefore find no error apparent on the face of record so as to invoke the review jurisdiction of this court. It is trite law that the power of review conferred under Order 47 Rule 1 C.P.C. cannot be used as an appeal in disguise. While exercising the review jurisdiction, this Court cannot re-appreciate the order under review and if the petitioner is aggrieved by the order, the petitioner has only to file an Appeal.

10. We are therefore of the view that as the Hon'ble Division Bench in the order under review has elaborately dealt with both the factual as well as the legal aspects of the case threadbare, the review petition filed by the petitioner cannot be entertained. Hence, we find no merits in the Review Petition and the same is dismissed. In view of the order passed in the Review Petition the Contempt Petition is closed and the other connected miscellaneous petitions are also closed. There shall be no order as to costs.

(J.N.B., J.) (N.M., J.)
22.09.2023

Index : Yes / No

Internet : Yes / No

Neutral citation : Yes / No

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Note: Issue order copy on 20.10.2023



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J. NISHA BANU, J.
and
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