



Rev.Aplw.(MD)No.12 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.06.2023

Pronounced on: 14.08.2023

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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Rev.Applc.Writ(MD)No.12 of 2021

in

WP(MD)No.25464 of 2018

and

**WMP(MD) Nos.3690, 4149 of 2021,
4464, 4462, 4466 and 4467 of 2021**

G.Gunasekaran

: Petitioner

Vs.

- 1.The Department of Municipal Administration
and Water Supply,
Represented by its Principal Secretary,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Madurai District,
Madurai.
- 3.The Public Works Department,
Represented by its Executive Engineer,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai 02.
- 4.The Tamil Nadu Slub Clearance Board,
Represented by its Superintending Engineer,
169, KK.Nagar Main Road,
Opp.Jawahar Hospital,
Madurai - 625 020.



Rev.Aplw.(MD)No.12 of 2021

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- 5.The Assistant Engineer,
The Public Works Department,
Irrigation Section No.II,
Periyar Vaigai Basin Sub Division No.1,
Madurai 02.
- 6.The State of Tamil Nadu,
Represented by its Secretary to Government,
Public Works Department and Water Resource
Organisation,
Fort St.George,
Secretariat, Chennai - 600 009.
- 7.The Secretary to Government,
Municipal Administration and
Water Supply and Sewage Department,
Fort St.George,
Secretariat, Chennai - 600 009.
- 8.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu
Fort St.George,
Secretariat, Chennai - 600 009.
- 9.The Chief Engineer,
Water Resource Organisation,
Chepauk, Chennai - 5.
- 10.The Commissioner of Revenue Administration,
Chepauk, Chennai -5.
- 11.The Commissioner,
Madurai Corporation,
Madurai.
- 12.The Commissioner of Police,
Madurai City.
- 13.The Tahsildar,
Madurai North,
Madurai.



Rev.Aplw.(MD)No.12 of 2021

14.The Revenue Inspector,
Madurai North,
Madurai.

15.The Assistant Director of Survey,
Madurai.

16.The Chairman - cum - Managing Director,
Tamil Nadu Generation and
Distribution Corporation Limited,
10th Floor,NPKKR Maaligai,
144, Anna Salai, Chennai - 600 002.

17.The Superintending of Engineer [Madurai Metro],
Tamil Nadu Generation and Distribution
Corporation Ltd,
K.Pudur, Madurai.

: Respondents

PRAYER: Review Application is filed under Order 47
Rule 1 read with 114 of Civil Procedure Code to
review the order made in WP(MD)No.25464 of 2018 dated
23.12.2020 passed by this Court.

For Petitioner	: Mr.T.Lajapathi Roy Senior Counsel for Mr.S.Rajasekar
For Respondent Nos.1,2, 3, 5 to 10 12 to 15	: Mr.Veerakathiravan, Additional Advocate General Assisted by Mr.SP.Maharajan, Special Government Pleader
For Respondent No.11	:Ms.S.Deva Sena
For Respondent Nos.16 to 17	:Mr.SMS.Johnny Basha
For Respondent No.4	:Ms.S.Latha



Rev.Aplw.(MD)No.12 of 2021

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ORDER

(Order of the Court was made by **B.PUGALENDHI .J**)

This review application in Rev. Appn (MD) No.12 of 2021 is filed by the writ petitioner Gunasekaran to review the order of this court passed in WP(MD).No.25464 of 2018, etc batch dated 23.12.2020. The other miscellaneous petitions in WMP(MD) Nos. 3690, 4149 of 2021, 4464, 4462, 4466 and 4467 of 2021 are filed by the respective petitioners, who are claiming to be the occupants of Bibikulam tank to grant leave to review the order of this Court in WP(MD).No.25464 of 2018 etc., batch dated 23.12.2020 on the ground that orders have been passed without providing any opportunity. Considering the common issue involved in the review petition and the grant leave petitions, they all are taken up together and disposed of by this common order.

2. The writ petition in WP(MD).No.25464 of 2018 was taken up along with a batch of writ petitions filed by the residents of Bibikulam, which were filed



Rev.Aplw.(MD)No.12 of 2021

against the notices issued by the Executive Engineer, Public Works Department, Periyar Vaigai Irrigation Division II, Madurai under the the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. This Court by considering the law laid down by this Court in **T.K.Shanmugam, Secretary, C.P.I. (M) v. State of Tamil Nadu & others, [2015-5- LW-397], T.S.Senthilkumar Vs the Government of Tamil Nadu and others [2010 WLR 113], L.Krishnan v. State of Tamil Nadu and others [2005 (3) LW 313]** which was confirmed by the Hon'ble Supreme Court in **Jagpal Singl & others v. State of Punjab & others, [2011(3) LW 17]**, disposed of those writ petitions with a direction to treat the impugned notices issued under the Tamil Nadu Protection of Tanks and Eviction of Encroachments Act, as show cause notices and directed the respondents to provide opportunity the petitioners to offer their reply within a period of two weeks and the respondents were further directed to take appropriate action based on the reply of those petitioners. This Court has also ensrued that



Rev.Aplw.(MD)No.12 of 2021

the deserving encroachers are provided with alternative accommodation.

3.This review petition is filed on the following grounds:

(i) The right to shelter is declared to be a fundamental right under Article 21 and Article 19(1) (e) of the Constitution by the Hon'ble Supreme Court and various other High Courts. There are around 5000 families residing at Bibikulam Tank and they have been in existence for more than 50 years, out of which most of them are daily wage workers, who belong to economically weaker section of the society. Some of them are also residing on the banks of the Kanmoi.

(ii) The government has reclassified Pudhukulam Kanmoi into Natham for house sites assignments in favour of 61 persons of Madurai Press Club Association Vide GOMs.No.369, Revenue Department (LDI(2)) dated 24.06.2008 and GOMs.No.329, Revenue & Disaster Management Department, Land Disposal Wing



Rev.Aplw.(MD)No.12 of 2021

(LDI(2)) dated 02.07.2020. If Pudukulam Kanmoi, a water body can be converted into Natham for house sites in favour Madurai Press Club Association, the same yardstick and approach can be applied to the petitioners and others who have been living in Bibikulam for several decades.

4.The case of the petitioners in the grant to leave petitions is that the petitioners are the occupants of houses constructed by the Slum Clearance Board under Basic Service to Urban Poor in Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and other schemes. The grievance of these petitioners is that the orders were passed by the Court without taking into account of the ground realities and since they were not a party in WP(MD) No.25464 of 2018, leave has to be granted to file the review application.

5.The learned Additional Advocate General appearing for the respondents submits that one D. Lakshmanan has filed a public interest litigation in



Rev.Aplw.(MD)No.12 of 2021

WP(MD) No.24207 of 2016 before this Court for removal of encroachments made in the Government Kanmoi Poromboke land in S.No.23/24, Nethaji Main Road, Bibikulam, Madurai and in that writ petition this Court by order dated 10.01.2017 directed the Public Works Department to remove the encroachments within a period of two months. Thereafter the respondents issued notices to all the encroachers and some encroachers have filed writ petitions before this Court challenging the eviction notice and this Court clubbed all the writ petitions and disposed of by a common order dated 23.12.2020 directing the respondents to remove the encroachments after providing opportunity to the encroachers. In pursuance of the same, Form III notices were issued to 581 encroachers by the Junior Engineer, Water Resources Department, Irrigation Section No.II, Madurai in the year 2021 and notices were served to all the encroachers on 02.02.2021. The final announcement was given through "Tom Tom" to all encroachers directing them to vacate the encroachments on or before 09.04.2021. For the



Rev.Aplw.(MD)No.12 of 2021

removal of encroachment assistance was also requested from the Madurai Corporation, Police Department, Electricity Board and Revenue Department. He further submits that on 13.07.2021, around 102 encroachments in the form of commercial shop buildings were removed and the Government buildings such as Village Administrative Office, Anganvadi Center and TASMAL building were removed on 23.08.2021. Totally 108 commercial buildings were removed from the said Bibikulam tank.

6. Adding to this, the learned Additional Advocate General submits that the Tahsildar, Madurai North Taluk requested the Project Director, Tamil Nadu State Rural Livelihood Mission (TNSRLM), Madurai to identify the persons who are below the poverty line. The Project Director, Tamil Nadu State Rural Livelihood Mission (TNSRLM), Madurai vide his proceedings dated 21.09.2021 informed the Tahsildar, North Taluk that out of 642 beneficiaries, only 109 persons are below the poverty line and 14 Ex-servicemen were given allotment of house sites at



Rev.Aplw.(MD)No.12 of 2021

Slum Clearance Board, Rajakoor. Moreover, 141 persons died and their legal heirs were the occupiers. Therefore the beneficiaries were identified and the official respondents have taken steps to allot the houses to all eligible beneficiaries

7. This court considers the rival submissions made and perused the materials placed on record.

8.The Bibikulam tank is a waterbody to an extent of 9.48.99 Hectares which lies in the heart of the Madurai City. In implementing a World Bank Project, the Tamil Nadu Slum Clearance Board had issued a government order to alienate a portion of the tank in favour of a few people that they were in possession of the same for several years. Taking advantage of this scheme, several others had also encroached and put up pucca buildings in the entire water body. As per the data provided by the respondents, there were 642 encroachments in the water body. The eligible persons for free house sites were identified by the government which is only 109



Rev.Aplw.(MD)No.12 of 2021

persons, whereas others are rich and powerful. The political parties have also established their offices by encroaching the waterbody. This court in the public interest litigation has taken cognisance of the encroachment in the waterbody and has issued directions to the PWD department to remove the encroachment at the Bibikulam Tank in the month of January 2017. Accordingly the Public Works Department identified encroachers and initiated action under the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act. The notices issued under Form-III were challenged by way of writ petitions and this Court by its earlier order dated 23.12.2020 disposed of those petitions, directing the department to provide opportunity to the encroachers and proceed further.

9.This Court in the order dated 23.12.2020 passed in WP(MD).No.25464 of 2018 held that Bibikulam water body has not been declared as notified area as per the Slum Clearance Areas (Improvement and Clearance) Act and however, the permission to enter



Rev.Aplw.(MD)No.12 of 2021

upon was granted to the Slum Clearance Board to implement the World Bank Project and accordingly few people were permitted to occupy the water body at Bibikulam. The Tahsildar, Madurai North Taluk who inspected the area pursuant to the direction of this court, on an earlier occasion reported that most of the encroachers are rich persons who put up pucca buildings and some of them rented out those buildings. The learned Additional Advocate General has also submitted that based on the request of the Tahsildar, the Project Director, Tamil Nadu State Rural Livelihood Mission has identified 109 persons below the poverty line out of the 642 encroachments and they are taking steps to allot houses to them at the earliest.

10.It is pertinent to note that the scope of review is very limited. The Hon'ble Supreme Court in **Kamlesh Verma Vs. Mayawati and others [2013 (8) SCC 320]**, has laid down the circumstances in which a review petition is maintainable and the same is extracted as under:

12/20



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Rev.Aplw.(MD)No.12 of 2021

"20.1. When the review will be maintainable:

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;

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 [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poullose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] 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 : JT (2013) 8 SC 275]

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, undermine its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard 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 fully within the domain of the appellate Court, it cannot be permitted to be advanced in the review petition.



Rev.Aplw.(MD)No.12 of 2021

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

11. According to the petitioners, the right to shelter and accommodation should be read into Article 21 of the Constitution. Hence, they should not be deprived of their basic rights by removing them as encroachers. The Hon'ble Supreme Court, which held the right to shelter and accommodation under Article 21, has also recognized the right to clean water as part of the right to a healthy environment in **Bandhua Mukti Morcha v. Union of India [AIR 1984 SC 802]** and **Narmada Bachao Andolan v. Union of India, [(2000) 10 SCC 664]**. A place of accommodation can be replaced and an alternative could be found. However, tanks of such a large extent being the source of water for the general public cannot be replaced.

12. The subject land bibikulam is classified as a water body which cannot be changed without any change of classification and without any permission,



Rev.Aplw.(MD)No.12 of 2021

the petitioners are not supposed to occupy a water body. The Slum Clearance Board can establish the building only in a slum area notified under section 3 of the Slum Clearance Areas (Improvement and Clearance) Act. The water body bibikulam has not been declared as a notified area as per section 3 of the Act. The enter upon permission granted by incompetent authorities to the Slum Clearance Board is in fact the reason for the large number of encroachments at the bibikulam tank. Though the petitioner claims that there are 5000 families residing in this Tank, the Tasildar, the Project Director TNRCH mission has identified only 109 persons as eligible persons, out of 642 encroachments and they are taking steps to allot houses to all those eligible persons.

13.The revenue officials further state that the other encroachers have put up pucca buildings and some of them have also rented out the same. These facts have already been taken into consideration by this court while disposing of the writ petitions. There is no change in circumstances and the decision



Rev.Aplw.(MD)No.12 of 2021

of the government regarding the Pudukukulam Kanmoi cannot be a ground to review the orders of this court in WP(MD) No.25464 of 2018. The Hon'ble Supreme Court and this court time and again have reiterated that a water body should be maintained and no one should be allowed to change its character. In view of the above decision of the Hon'ble Supreme Court in **Kamlesh Verma's** case, this court is not inclined to entertain the review petition and grant leave petitions.

14.Accordingly, the review application is dismissed and the petitions filed in WMP(MD) Nos.3690, 4149 of 2021, 4464, 4462, 4466, 4115 and 4467 of 2021 are dismissed. No costs.

[R.S.M.,J.] [B.P.,J.]
14.08.2023

Index : Yes / No
Internet : Yes

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Rev.Aplw.(MD)No.12 of 2021

To

WEB COPY

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Rev.Aplw.(MD)No.12 of 2021

WEB COPY

- 8.The Secretary to Government,
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Government of Tamil Nadu
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Water Resource Organisation,
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