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Review Appln. (Writ) No.185 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Review Appln. (Writ) No.185 of 2012

The Commissioner,
Corporation of Chennai,
Ripon Building,
Chennai – 600 003.

... Petitioner/3rd respondent

vs.

1.A.R.Nageshwara Rao

... Respondent/Writ Petitioner

2. The Deputy Secretary to Government,
Public Works Department,
Fort St. George,
Chennai – 600 009.

3. The Tahsildar,
office of the Tahsildar,
Perambur – Purasawakkam,
Perambur, Chennai – 600 011. ... Respondents/Respondents

PRAYER: Review Application filed under Order XIV Rule 1, r/w. Section 114 of Code of Civil Procedure, to review the order passed in WP.No.20836 of 2010 dated 19.01.2011 and to allow this Review Application.

For Petitioner : Mrs.P.T.Ramadevi,
Standing Counsel for Corporation.



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For Respondents : Mr.R.Manickavel (for R1)

ORDER

The petitioner herein seeks review of the order passed by this Court dated 19.01.2011 in W.P.No.20836 of 2010.

2. The writ petition was filed seeking a direction to the respondents therein to pay the compensation for the land belonged to the petitioner situated in S.No.4, 6, 7 and 10, corresponding T.S.Nos.22/2 and 23 in Block No.4 of Sembiam Village, Perambur-Purasaiwalkam Taluk.

3. When the writ petition came up for hearing, after recording the stand of the review applicant/3rd respondent in the writ petition, this Court passed the following order, which is sought to be reviewed.

“4. The learned standing counsel appearing for the third respondent-Corporation would submit that the legal heirs of late A.N.Kupparam are entitled to receive the compensation and unless the assessment of compensation is made by the second respondent, they are not in a position to pay the same to the legal representatives of late A.N.kupparam.

5. Mr.R.Neelakantan, learned Additional Government Pleader for the respondents 1 & 2 would submit that the second respondent may be directed to do the said exercise within a stipulated period so as to enable the third



respondent to pay the compensation.

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6. In the result, this Court directs the third respondent to send the proposal for payment of compensation in respect of the land in question within a period of four weeks from the date of receipt of a copy of this order to the second respondent and the second respondent, on receipt of such a proposal from the third respondent, is directed to consider the same and pass orders within a period of six weeks thereafter and also communicate the same to the petitioner as well as to the third respondent. The writ petition is disposed of accordingly. No costs.”

4. Now, the present review application is filed mainly on the ground that at the time of hearing of the writ petition, certain vital records were not traceable and now only the review applicant found that the land in dispute is classified as 'Boosthi Odai' and used for drainage of flood water.

5. The learned counsel for the review applicant/3rd respondent by taking this court to the Sale Deed in favour of the petitioner of the year 1959 submitted that even in the said document, while describing the subject matter of the sale deed, 'odai' was shown as western boundary and therefore, the disputed land is only an 'odai' and as a result, the petitioner is not



entitled to any compensation.

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6. It is settled law that discovery of new facts or new document *per se* is not a ground for seeking review of the order. The person who seeks to review the order on the ground of discovery of new and important matter or evidence, must establish that it was not within his knowledge or could not be produced by him at the time the order was passed, notwithstanding exercise of due diligence by him. In this regard, it would be appropriate to refer to the observation of the Division Bench of Allahabad High Court in ***Banaras Electric Light and Power Co. Ltd. v. The Collector, Varanasi and others***, reported in **AIR 1982 All 355 : MANU/UP/0304/1982**, which reads as follows:

“9. Coming to the facts of the instant case it would be seen that here the review is sought not on the ground that a glaring omission or a patent mistake or like grave error has crept in earlier by judicial infallibility nor on the ground that this Court committed by grave and palpable error in deciding the writ petition. It has been filed only on the ground of discovery of new and important evidence. As has been emphasised by the Supreme Court in A.T.Sharma's case (A. T. Sharma v. A. P. Sharma MANU/SC/0058/1978) which has been followed by the Full Bench of the Gujarat High Court in the case of Gujarat University (Gujarat University v. Sonal P. Shah



MANU/GJ/0064/1982) before a review application can be entertained this ground it has to be established by the applicant in the review application that the additional evidence which is sought to be relied on was after the exercise of due diligence not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. In the instant case there is no averment to this effect either in the affidavit filed in support of the review application or even in the rejoinder affidavit. In the affidavit filed along with the review application what has been stated is that after the judgment was delivered in the writ petition the Superintending Engineer, Electricity Supply Undertaking, State Electricity, Varanasi had the occasion to appear before the Special Officer Electricity to the State Government and in that connection while wading through the old files in the office of the Electrical Inspector to the State Government he found the document referred to in the review application. As pointed out above the sheet anchor of the review application is a notice sent by the petitioner to the State Government and the U. P. State Electricity Board itself on January 24, 1972. This notice, therefore, was apparently with the U. P. State Electricity Board which is an applicant in the review application even at the time when the counter-affidavit in the writ petition was filed and the writ petition was heard and decided. The only averment in this behalf in the rejoinder affidavit is that the officers dealing with the case had no knowledge and had no occasion to know about this notice given by the petitioner-Company and, therefore, could not bring it to the notice of this Court at the time when the writ petition was heard. It would thus be seen that neither in the affidavit filed along with the review application nor in the rejoinder affidavit it has been stated that even after exercise of due diligence these documents were not within the knowledge of respondents 2 and 3 or could not be produced by them at the time when the writ petition was heard and decided. The requirement of the "exercise of the



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diligence" at the appropriate "time constitutes the very basis for maintaining a review application filed on the ground of discovery of new and important matter of evidence. In Pyare Lal v. Chhotey Lal MANU/UP/0111/1941 : AIR 1942 All 82 while dealing with the power of review under Order 47, Rule 1, C. P. C. on the basis of discovery of new or important evidence it was held that Order 47. Rule 1. C. P. C. requires a high standard of diligence and that the person who wants a review should prove strictly diligence he claims to have exercised. The same view was taken in an earlier decision in Kariya Mahto v. Ram Sarup AIR 1917 All 107. ”

[emphasis supplied by this Court]

7. In the case on hand, as mentioned earlier, the order was passed by this Court by recording the submission of the review applicant/3rd respondent therein that writ petitioner were entitled to receive the compensation and unless assessment of compensation was made by the 2nd respondent therein, the review applicant could not pay compensation to the writ petitioner. Having taken such a stand, admitting the right of the petitioner, the review applicant is not entitled to maintain this review application, based on new materials he acquired in which it is stated that the land in question was classified as 'Boosthi Odai'.

8. In the review grounds, it was stated by the review applicant that at



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the time of passing orders, vital documents were not within the knowledge of the Corporation and only after verifying facts from the revenue department, the applicant came to know that the disputed land is 'Odai' running on private land. It was also admitted by the review applicant that the officials of the applicant Corporation informed the Standing Counsel without knowing facts inadvertently. Therefore, based on the grounds raised by the applicant, it is clear, the applicant failed to exercise due diligence at the time the writ petition was heard. Further, the ground raised by the review applicant now would amount to withdrawing earlier admissions made by him.

9. Therefore, I do not find any acceptable ground to review the order passed in the writ petition. Accordingly, the review application stands dismissed. No costs.

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Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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S.SOUNTHAR, J.

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To

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