



Review Application No.1 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2024

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**Review Application No.1 of 2020
and
W.A.No.597 of 2018**

EVP Estates & Properties Development Ltd.,
No.23, Sir Thiyagaraya Road,
Pondy Bazar, T.Nagar,
Chennai – 600 017.
Represented by its
Chairman & Managing Director
E.V.Perumalsamy Reddy,
T.Nagar, Chennai – 600 017.

.. Applicant

Vs.

1.The District Collector,
Collectorate,
Kancheepuram District – 631 501.

2.The Special Tahsildar (LA),
Chennai Airport Expansion Scheme,
Sriperumbudur,
Kancheepuram District.

... Respondents



Review Application No.1 of 2020

Prayer: Review Application filed under Order XLVII Rule 1 and Section 114 of the Code of Civil Procedure to review the order dated 27.03.2018 passed in W.A.No.597 of 2018.

For Applicant : Mr.Natesh Pandi
for Mr.J.Ravikumar

For Respondents : Mr.Ramanlaal,
Additional Govt. Pleader
Assisted by
Mr.A.Selvendran,
Special Govt. Pleader

Amicus Curiae : Mr.T.Mohan, Amicus Curiae

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This review application is filed seeking review of the order dated 27.03.2018 passed in W.A.No.597 of 2018.



The brief facts that are necessary for disposal of this review application are as follows:

2. The applicant in the review application is the petitioner in the writ petition in W.P.No.21283 of 2015. The writ petition is filed by the petitioner seeking the following relief :

“to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent bearing Rc.A.164/2013 dated 07.01.2014 and quash the same and consequently direct the 1st respondent to refer the Award in favour of petitioner bearing No.8/2009, 10/2009, 14/2009, 15/2009, 16/2009, 17/2009, 20/2009, 21/2011, 24/2012 and 3/2012 to court under Section 18 of the Land Acquisition Act, 1894 for enhanced compensation, solatium and interest.”

3. By order dated 04.01.2017, the writ petition was allowed by directing the respondents in the writ petition to refer the case of the petitioner under Section 18(1) of the Land Acquisition Act to the competent civil Court within a period of four weeks.



4. It is to be noted that the acquisition in this case is under The Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997. Therefore, the question of reference is not under Section 18 but under Section 8 of the Tamil Nadu Acquisition of Land for Industrial Purpose Act.

5. It is not in dispute that the respondents have filed a detailed counter narrating the sequence of events right from the date of issuance of notice under Section 3(2) of the Act. The specific case of the respondents is that the writ petitioner was given opportunity to state his case as to the quantum of compensation which has to be determined under Section 7(5) of the Act. It is stated that many land owners including the writ petitioner gave consent to receive the amount determined without any objection and therefore the awards were passed by consent.

6. As far as the writ petitioner is concerned, the Special Tahsildar and the writ petitioner have entered into agreements, which was titled as agreement under Section 7(2) of the Act, on different dates in respect of several parcels of lands. In Clause (2) of the said agreement, the Government and petitioner as owner/ person interested in the land mutually agreed for an amount of



Rs.1,06,00,000/- as land value per acre, which is payable by the Government as compensation to the petitioner. The petitioner has agreed to receive the compensation. It is not in dispute that formal awards signed by the District Collector as required under the Rules vide Award No.8, 10, 14, 15, 16, 17, 20 of 2009, 21 of 2011, 3 and 24 of 2012 were passed. It is stated in all the awards that the land owners had given their consent to receive the amount determined without any objection. After deducting TDS, the entire compensation as per Award had been paid to the petitioner. The fact that the amounts as determined were received by petitioner without protest is not disputed.

7. The petitioner is not an illiterate, who can dispute the contents of the document. However, the fact remains as per record that the award was passed by consent after a formal agreement that was signed by the petitioner.

8. The learned counsel for the petitioner seriously disputed the agreement and the award. According to the learned counsel, the award cannot be taken as an award passed by consent in view of the violation of the statutory requirements. After payment, the petitioner made a representation to



make reference under Section 18 of the Act for determination of higher compensation. The said representation was rejected on the ground that the amount was determined by consent. Hence, the petitioner filed the writ petition.

9. The learned Single Judge allowed the writ petition without going into the averments in the counter affidavit. However, the Division Bench while disposing of the appeal gone through the entire records and found that the compensation has been determined and paid as per the agreement between the Government and the land owner.

10. It is not in dispute that the petitioner had received a total amount as per the awards paid by recording consent. After receiving the compensation probably, the petitioner has come by way of an application seeking reference under Section 18 of the Land Acquisition Act, even though the acquisition is under the Central Act, 1894 and not under the State Act.

11. The Division Bench after recording the relevant clause in the terms of agreement, rejected the arguments of the learned counsel appearing for the writ



petitioner that there is no agreement in terms of Section 7(2) of the Act before passing the award. Since the writ petitioner had received the amount of compensation, taking note of the agreement signed by writ petitioner Division Bench held that the writ petitioner is bound by the terms of agreements and that they cannot be unilaterally cancelled at the request of the petitioner later. Thereafter, the Division Bench has examined the maintainability of reference in the light of the judgment of the Hon'ble Supreme Court in ***State of Karnataka and another vs. Sangappa Dyavappa Biradar and others*** reported in **2005 (3) Scale 424**, wherein it is held that the land owners having accepted the award without demur is estopped and precluded from maintaining an application for reference.

12. On the above factual premise this review application is filed by the petitioner alleging that there is error apparent on the face of record.

13. Before going into the merits of the contentions raised by the applicant, this Court on the facts recorded by the Division Bench earlier finds that the applicant has come forward with a case pleading ignorance of every facts that are meticulously recorded by the Division Bench. This Court is not



concerned with the acquisition proceedings as the acquisition proceeding is not questioned before us.

14. The prime submission of the learned counsel for the applicant is about the validity of the alleged agreement that is recorded by the Division Bench. The learned counsel pointed out that the State is not represented by the competent Authority who can enter into contract, so that the agreement is also binding on the Government. Secondly it is stated that the agreement was after the award signed by the competent Authority. In other words the learned counsel pointed out that the award of the District Collector was by reference by the land acquisition officer. He contended that when the land acquisition officer referred the matter to the District Collector, the District Collector has to pass award on merits after hearing the parties as per the provisions of the Land Acquisition Act. The learned counsel gone to the extent of arguing before this Court that the agreement is not signed by the land acquisition officer.

15. All these contentions cannot be accepted in the review. First of all the fact that the Special Land Acquisition Tahsildar has also signed the agreement is seen from the original. The contention that the District Collector



can pass award only on a reference and therefore the fact that an award has been passed by the District Collector would show that the award was not by consent and it was on a reference is falsified by a simple fact that the statute provides a specific format and this Court finds that the award is in the prescribed form. Therefore, the award by consent is also passed in terms of statutory format.

16. Finally a submission was made doubting the genuineness of the document. All these contentions were not put forth at the time when the appeal itself was argued on merits. When this Court has recorded several factual findings by referring to the documents, this Court finds no mistake or error in recording the facts.

17. This Court must examine whether the review application can be entertained on the grounds raised. The scope of review has been examined by this Court and the Hon'ble Supreme Court in several judgments. This Court and the Hon'ble Supreme Court has repeatedly held that the review is not an appeal. In the review there is no scope for re-hearing. Even when the order is erroneous, this Court will not interfere or entertain the review application. The



Hon'ble Supreme Court has also held that error apparent should be an error which is apparent from the records. Even if the error has to be detected by a process of reasoning, the review application is not maintainable under Order 47, Rule 1 of the Code of Civil Procedure.

18. Hon'ble Supreme Court, has reiterated the following principles;

(a) A review has to be strictly confined to the grounds available under Order 47 Rule 1 of CPC.

(b) The power of review cannot be compared with the appellate power which enables only the superior Court to correct even if the judgment of the subordinate Court is erroneous. A review cannot be entertained to rehear the proceedings. In other words, review cannot be treated as an appeal in disguise.

(c) Under Order 47 Rule 1 of CPC, a judgment can be reviewed if there is mistake or error apparent on the face of the record. It is essential that the error must be one which is manifest on the face of record. Even if a statement in the judgment is wrong, it would not follow that there is an error apparent on the face of the record, as Courts have drawn distinction between an erroneous



decision and a decision which could be characterised as vitiated by error apparent. In other words, the error contemplated under the Rule must be as apparent from the face of the record and not an error which has to be detected by a process of reasoning.

(d) It is true that, what is an error apparent on the face of the record cannot be defined precisely or exhaustively and it must be left to be determined consciously on the facts of each case.

(e) A mere possibility of two views of subject is not a ground for review.

(f) In a review application it is not open to the Court to re-appreciate the evidence and reach a different conclusion even if that conclusion is possible. There cannot be an argument on appreciation of evidence which amount to converting the review petition into an appeal. Repetition of old or overruled argument cannot be entertained to reopen the decision on merits. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.



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(g) Though the power of review can be exercised where there is some mistake or error apparent on the face or any analogous ground, it cannot be exercised on the ground that the decision was erroneous on merits.

19. In view of the law settled by this Court, on the scope of review, this Court finds no merits in the review application especially having regard to the facts as borne out of records. In such circumstances, this review application is **dismissed**, however, liberty is granted to adjudicate before the appropriate forum, if really the petitioner wants to canvass that the agreement is void or invalid for any reasons. However, when such issue is raised by filing a suit, it is open to the respondents to raise all the objections with regard to maintainability of the suit and on the question of limitation or on any other grounds.

(S.S.S.R.,J.) (P.V.,J.)
23.10.2024

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