



Rev.Aplw(MD)No.128 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Rev.Aplw(MD)No.128 of 2023

in

W.P(MD)No.363 of 2022

M.Veerasubramanian

... Applicant/Petitioner

Vs.

1.The Chief Engineer,

Tamil Nadu Urban Habitat Development Board,
Chennai.

2.The Executive Engineer,

Tamil Nadu Urban Habitat Development Board,
Madurai Region,
169, K.K. Nagar Main Road,
Madurai – 625 020.

... Respondents/Respondents

Prayer : Review Application is filed under Order 47 Rule 1 r/w. Section 114 of C.P.C., to review the order of this Court, dated 14.06.2023 passed in W.P(MD)No.363 of 2022.



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Rev.Aplw(MD)No.128 of 2023

For Petitioner : Mr.S.Mahesh Banu

ORDER

The Review Application has been filed by the writ petitioner seeking to review an order dated 14.06.2023 in W.P.(MD)No.363 of 2022.

2. W.P.(MD)No.363 of 2022 had been filed in the nature of Certiorarified Mandamus seeking interference with an order, dated 11.11.2021 in Na.Ka.No.1002/Sa.Va.A./2020 on the file of the second respondent, Executive Engineer, Tamil Nadu Urban Habitat Development Board, Madurai and to direct the said respondent to grant subsidy on the basis of the sanction order, dated 24.08.2018.

3. In the residential site at Kumaran Village in S.No.34/9A1, the petitioner had constructed a house and had approached the respondents seeking subsidy under PMAY-HFA Urban BLC. Sanction was granted on 24.08.2018 to the petitioner herein allotting Rs.2,10,000/- (Rupees Two Lakhs and Ten Thousand only) to be paid in four months.



Rev.Aplw(MD)No.128 of 2023

WEB COPY

4. It was the contention of the writ petitioner that he had commenced construction and had informed at every stage of the construction, through telephonically to the second respondent. It had also been contended that one Durairaj, who was working under the second respondent had visited the place and inspected the ongoing construction and had given periodical reports to the second respondent. But however, the impugned order came to be passed by stating that the petitioner had constructed totally, 912 sq.ft., of construction in the ground floor and 120 sq.ft., in the first floor totally, 1102 sq.ft., whereas, the subsidy was offered only on the basis that the petitioner would put up construction of 300 sq.ft.

5. It is contended by the learned counsel that the sanction was to put construction of not less than 300 sq.ft. It had been contended that this Court had wrongly interpreted the sanction order. It had been further contended that there is no upper ceiling limit is fixed, so far as the area of construction and therefore, the impugned order itself is wrong. It had also been stated that in the counter affidavit false facts have been stated by the respondents and on the basis of such facts, the Court had



Rev.Aplw(MD)No.128 of 2023

passed the impugned order. The Court cannot revisit the entire issue of the facts as stated in the petition, the facts as stated in the counter affidavit and the facts as stated in the impugned order. If there is an analysis of the facts once again, then the only remedy available for the writ petitioner would be only to file an appeal and not to seek review of an order.

6. In the Madras High Court Writ Rules 2021, which equally applies to the Madurai Bench also, Rule No.29 provides for Review of an order. Rule 29 is as follows:

“29. Review

(1) The Court may review its orders but no petition for review will be entertained except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure, 1908.

(2) A petition for review shall be duly supported by an affidavit and shall be filed within 30 days from the date of the order sought to be reviewed and shall clearly set out the grounds for review. However, the Court may entertain a review petition filed thereafter, for sufficient cause.

(3) A petition for review shall be disposed of, as



Rev.Aplw(MD)No.128 of 2023

far as practicable, by the same Judge who delivered the order sought to be reviewed. The Court may either dismiss the petition or direct notice to the respondents.

(4) No petition to review an order made on a petition for review or on an order made in the main petition consequent to a review being allowed shall be entertained.”

7. A plain reading of the aforementioned stipulation, would indicate that no petition for review will be entertained, except on the grounds mentioned in Order 47 Rule 1 of the Code of Civil Procedure, 1908.

8. This naturally necessitates examination of the stipulations in Order 47 Rule 1 of the Code of Civil Procedure.

9. Even before examining Order 47 Rule 1 of the Code of Civil Procedure, it would only be appropriate to examine Section 114 of the Code of Civil Procedure.

10. Section 114 of the Code of Civil Procedure is as follows:



WEB COPY



Rev.Aplw(MD)No.128 of 2023

“114. Review:

Subject as aforesaid, any person considering himself aggrieved

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

(b) by a decree or order from which no appeal is allowed by this Court, or (c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.”

11. Order 47 Rule 1 of the Code of Civil Procedure is as follows:

“1. Application for review of judgment.

(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



Rev.Aplw(MD)No.128 of 2023

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 face of the record of for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation-

The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.”

12. A plain reading of the aforementioned provisions makes it clear that a review would lie against a decree or order, against which,



Rev.Aplw(MD)No.128 of 2023

no appeal had been preferred or a decree or order from which no appeal is allowed or a decision of a reference of a Court of Small Cases on the following grounds:

(i) discovery of new and important matter of evidence, which was not produced at the time when the order was made;

(ii) on account of some mistake or error apparent on the face of record; and

(iii) any other sufficient reason.

13. In the instant case, there is no dispute that an *intra* Court appeal could be filed as against the order in the writ petition. No reasons had been advanced as to why such Writ Appeal has not been filed.

14. Further in a Review Application, there cannot be an application of mind once again to examine whether the order in the review had been passed correctly or not. There must be an error apparent on the face of record.

15. In (1997) 8 SCC 715 [Parsion Devi and Others Vs.



Rev.Aplw(MD)No.128 of 2023

Sumitri Devi and Others], the Hon'ble Supreme Court has held as follows:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected“. A review petition, it must be remembered has limited purpose and cannot be allowed to be “an appeal in disguise.

10. Considered in the light of this settled position we find that Sharma, J. clearly overstepped the jurisdiction vested in the court under Order 47 Rule 1 CPC. The observation of Sharma, J. that “accordingly“, the order in question is reviewed and it is held that the decree in question is reviewed and it is held that the decree in question was of composite nature wherein both mandatory and prohibitory injunction were provided“ and as such the case was covered by Article the scope of Order 47 Rule 1 CPC.



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Rev.Aplw(MD)No.128 of 2023

There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the later only can be corrected by exercise of the review jurisdiction. While passing the impugned order, Sharma, J. found the order in Civil Revision dated 25.4.1989 as an erroneous decision, though without saying so in so many words. Indeed, while passing the impugned order Sharma, J. did record that there was a mistake or an error apparent on the face of the record which not of such a nature, “Which had to be detected by a long drawn process of reasons” and proceeded to set at naught the order of Gupta, J. However, mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the review jurisdiction. Recourse to review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment debtors could have approached the higher forum through appropriate proceedings, to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a “review of the order of petition. In this view of the matter, we are of the opinion that the impugned order of Sharma, J. cannot be sustained and accordingly accept this appeal and set aside the impugned order dated 6.3.1997.”



Rev.Aplw(MD)No.128 of 2023

16. In (2008) 11 SCC 107 [T.Thimmaiah (dead) by Lrs.

Vs. Venkatachala Raju (dead) Lrs.], the Hon'ble Supreme Court has held as follows:-

“2. During the course of hearing, the learned counsel for the appellant has pointed out that a bare perusal of the order in review would reveal that it is based on a complete reappreciation of the matter on facts and the provisions of Order 47 Rule 1 of the Code of Civil Procedure which would govern an application for review, have been completely ignored. It has been submitted by the counsel that the Single Judge had, in the first Judgment, examined the facts and dismissed the appeal and on a reconsideration of the same facts, had allowed the same, which was not justified. We find merit in this plea. From a bare perusal of the Judgment in review, it is clear that the principles laid down under Order 47 Rule 1 CPC have been completely ignored. We accordingly allow the appeal, set aside the order in review dated 26.2.2001 and dismiss the appeal in the suit. We, however, give liberty to the respondent herein to challenge the Judgment dated 16.2.1999, if so advised.”



Rev.Aplw(MD)No.128 of 2023

WEB COPY

17. In **(2018) 4 SCC 587 [Sivakami and Others Vs. State of Tamil Nadu and Others]**, the Hon'ble Supreme Court has held as follows:-

“18. The scope of the appellate powers and the review powers are well defined. The power of review under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and it may be exercised only if there is a mistake or an error apparent on the face of the record. The power of review is not to be confused with the appellate power. The review petition/application cannot be decided like a regular intra court appeal. On the other hand, the scope of appeal is much wider wherein all the issues raised by the parties are open for examination by the Appellate Court.

19. A fortiori, what was not decided in appeal by the Division Bench could not be decided by the Division Bench while deciding the review application. It is for this reason, we are also constrained to set aside the review order.”

18. Further it is contended by the learned counsel for the petitioner that the points raised have not been addressed.



Rev.Aplw(MD)No.128 of 2023

WEB COPY

19. But however, on perusal of the order and review shows that the arguments advanced by the petitioner had been extracted extensively, the counter had also been extracted and thereafter, the order had been passed. If the false facts had been stated in the counter, then the burden was on the petitioner herein to file a rejoinder to the counter and point out the falsity made in the counter. Without a rejoinder having been filed to the counter affidavit there cannot be a presumption that statements made in the counter are false. Whether the sanction was granted to construct a house of 300 sq.ft., or less than 300 sq.ft., or more than 300 sq.ft., or whether there was a ceiling limit for the area for construction are issues of fact which can be agitated only in a Writ Appeal and not by way of Review.

20. In *Aribam Tuleshwar Sharmma v. Aribam Pishak Sharma* and others (1974) 4 SCC 389, the the Hon'ble Supreme Court had very clearly stated that merely because a document which formed part of the record was not considered at the time of deciding the case, it cannot be categorized as a mistake or error apparent on the face of record. The



Rev.Aplw(MD)No.128 of 2023

Hon'ble Supreme Court had held as follows:

WEB COPY

*“....The Judicial Commissioner gave two reasons for reviewing his predecessor's order. **The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in **Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909]** there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, **there are definitive limits to the exercise of the power of review.** The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due***



Rev.Aplw(MD)No.128 of 2023

*diligence was 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; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, **it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an appellate court to correct all manner of errors committed by the subordinate court.***”

(emphasis supplied)

21. It had been clearly held that non-consideration of the exhibits by the Judicial Commissioner, would not be a ground to review the order.

22. Even in the instant case the charge of the learned counsel that all points raised during arguments cannot be a ground to review the order passed in the Writ Petition.



Rev.Aplw(MD)No.128 of 2023

WEB COPY

23. I am afraid that the Review Application in the instant case would not lie and therefore, the Review Application stands dismissed. No costs.

25.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

RM



Rev.Aplw(MD)No.128 of 2023

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WEB COPY



Rev.Aplw(MD)No.128 of 2023

C.V.KARTHIKEYAN, J.

RM

**Rev.Aplw(MD)No.128 of 2023
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