



Rev.Aplw(MD)No.106 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 28.10.2024

Pronounced on : 24.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**Rev.Aplw(MD)No.106 of 2023
and
WMP(MD)No.12272 of 2023**

- 1.S.Muthusami
- 2.R.Kasthuri
- 3.M.Kathirvel
- 4.N.Murugan
- 5.K.Subramani
- 6.A.S.R.Alagarsamy
- 7.M.Navamani
- 8.V.Murugesan
- 9.K.Sumathi
- 10.P.N.Krishnan



Rev.Aplw(MD)No.106 of 2023

11.M.Selvakumar

12.A.Subramanian

13.K.Periyasami

... Review Applicants

v.

1.A.Radhakrishnan

2.The Commissioner of Survey and Settlements,
Chepauk, Chennai – 600 005.

3.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Nungambakkam High Road,
Chennai – 600 034.

4.The Additional Director General of Police,
Law and Order,
Dr.Radhakrishnan Road,
Chennai – 600 004.

5.The District Collector,
Karur District,
Thanthonimalai, Karur.

6.The Sub-Divisional Executive Magistrate cum
Revenue Divisional Officer,
Karur.

7.The Superintendent of Police,
Karur District,
Karur.



Rev.Aplw(MD)No.106 of 2023

8.The Assistant Director,
District Land Survey Office,
Karur.

9.The Executive Officer,
Arulmigu Balasubramaniaswamy Temple,
Vennaiimalai, Manmangalam Taluk,
Karur.

10.The District Registrar,
Karur.

11.The District Revenue Officer,
Karur District, Thanthonimalai,
Karur.

... Respondents

PRAYER: Review Application filed under Order 47 Rule 1 r/w Section 114 of the Civil Procedure Code to review the order dated 23.10.2019 made in WP(MD)No.64 of 2018.

For Review : Mr.K.Doraisamy,
Applicants Senior Counsel
for Mr.Kandhan Doraisamy

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by
Mr.K.Selvaganesan,
Additional Government Pleader
for R.2 to R.8, R.10, R.11

Mr.S.Madhavan for R.9



ORDER

B.PUGALENDHI, J.,

This review application is filed by the review applicants / respondents 78, 176 to 186, 190 in WP(MD)No.64 of 2018 to review the directions granted in Para No.37(3) of the order dated 23.10.2019 made in WP(MD)No.64 of 2018.

2.The only contention of the review applicants is that this Court has passed the order in dated 23.10.2019 based on a status report of the District Revenue Officer dated 30.01.2019, however, it was not served on them.

3.Learned Senior Counsel appearing for the review applicants submitted that the report of the District Revenue Officer dated 30.01.2019 was not served on the review applicants. He further submitted that the writ petition was reserved for orders on 29.01.2019 and only thereafter, this report dated 30.01.2019 was received by this Court and was relied on for disposing the writ petition.



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4.Considering the said submission made by the learned Senior Counsel, this Court directed the Registry to list the files in WP(MD)No. 64 of 2018, along with this review application.

5.Heard the learned Senior Counsel appearing for the review applicants and perused the available materials.

6.The writ petition was filed by a devotee of Arulmigu Balasubramaniya Swamy Temple, Vennaimalai, Manmangalam Taluk, Karur District, as a party-in-person. The case of the writ petitioner was that the Temple is a 1000 years old ancient Temple, having vast extent of lands mostly in Kathaparai, Aandalkovil and Aathur Villages of Karur District. According to him, most of the Temple lands are under encroachment and the authorities are not taking any steps to remove the encroachments. He was adjudicating the issue from the year 2015 by repeated representations and filed the writ petition in the year 2018.



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7.The District Collector, Karur, has filed series of status reports confirming the averments of the writ petitioner that there are encroachments in the Temple lands in Kathaparai Village, Aandalkovil Village and Aathur Village. In fact, the District Collector, in his report dated 26.03.2018, has furnished the details of the Temple lands under encroachment, its position in the Settlement Register in the year 1912, UDR Register, the nature of encroachments and the pattadars, by classifying the encroachments into five categories.

8.Subsequent to this report dated 26.03.2018, the alleged encroachers, including the review applicants, have filed applications to implead themselves as parties to the writ petition in WP(MD)No.64 of 2018. Respondents 11 to 204 in the writ petition were impleaded vide order dated 11.06.2018 made in WMP(MD)Nos.3287 to 3289, 3291, 6021, 6289, 6290, 6291, 6310 of 2018 in WP(MD)No.64 of 2018 and respondents 205 to 239 in the writ petition were impleaded vide order dated 25.06.2018 made in WMP(MD)Nos.12186 to 12190, 12243, 12244, 12248,



12276, 12277 of 2018 in WP(MD)No.64 of 2018. The review applicants before this Court are the respondents 78, 176 to 186, 190 in the writ petition.

9. In the impleading petitions, the petitioners have relied upon the report of the District Collector dated 26.03.2018 on the categorization of encroachments and have taken a stand that they are in occupation of the lands pursuant to the settlement patta issued in their favour. One such specific averment made in WMP(MD)No.6310 of 2018 in WP(MD)No.64 of 2018, in the form of objections, is extracted as under:-

“11. It is respectfully submitted that on 26.03.2018 the 5th respondent namely The District Collector, Karur filed a Report before this Hon'ble Court classifying the entire disputed lands into Five categories. The District Collector under category Three conceded that in respect of lands for which Pattas have been issued as per Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, TN Act 30 of 1963, have become final. Statutory orders passed by the Statutory Authorities can be interfered with only as per the provision of the Act. Since no Appeal / Revision was preferred in time, the orders passed by the Settlement Authorities cannot be interfered with by Revenue Authorities.



12. It is respectfully submitted that the District Collector, Karur in the report filed on 26.03.2018 included only few survey numbers in Kathaparai Village namely Survey Numbers 181, 182, 184, 192, 246, 249 and 250 under the category Three (Pattas issued as per Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, TN Act 30 of 1963). ...”

10.This Court has disposed of the writ petition in WP(MD)No.64 of 2018, by order dated 23.10.2019, as under:-

“37.The judgments cited above are squarely applicable to the facts in case on hand and by applying the decisions cited supra and also in view of the stand taken by the temple and the District Collector, Karur, this Court passes the following order:

1.Insofar as the first and second categories are concerned, the revenue records are in the name of the temple and if there are any encroachments the temple administration has to initiate appropriate proceedings under Section 78 of HR & CE Act and all the encroachments shall be removed within a period of six months from the date of receipt of a copy of this order.

2.Insofar as the third category is concerned, wherein settlement pattas were given in the name of the individuals, the temple has to work out its remedies by filing a suit within a period of three months from the date of receipt of the copy of the



order and the same has to be disposed of by the concerned Court within a period of one year thereof. The fourth respondent as well as the Commissioner, Archives and Historical Research Department shall provide all relevant records of the lands in issue to the HR & CE Department within two months from the date of receipt of copy of this order enabling them to initiate a suit as directed.

3.Insofar as the fourth category is concerned the revenue records have been altered to the name of the individuals during UDR, and it is now reported that the DRO, after due enquiry, has passed orders restoring pattas to the temple and therefore, the temple authorities have to initiate proceedings under Section 78 of HR & CE Act and take further action. If the parties are aggrieved, it is for them to challenge the same, in the manner known to law, by approaching appropriate forum and in any event, if any appeal is filed, the same shall be decided within a period of six months thereof.

4.Insofar as the fifth category is concerned, the revenue records have been altered into the name of the individuals after UDR and now it is reported that the RDO has conducted an enquiry and restored the pattas in the name of the temple and therefore, the temple is at liberty to restore their properties by initiating proceedings under Section 78 of HR & CE Act and take further action. If anybody is aggrieved by the order of the



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RDO, it is open to them to challenge the same before the competent authority, and if any such appeal is filed, the same shall be disposed by the concerned forum on merits within a period of six months from thereof."

11.Para No.37(3) of this order is sought to be reviewed on the ground that the order was passed by relying upon the report of the District Revenue Officer dated 30.01.2019, which was filed by the District Revenue Officer after reserving the writ petition for orders and without serving any copy on the review applicants. In this report, the District Revenue Officer has categorized the encroachments into five categories.

12.The writ petition was originally reserved for orders on 29.01.2019. The Special Government Pleader, after making his oral submissions on 29.01.2019, sought permission to file written submissions and accordingly, he filed his written submissions along with the report of the District Revenue Officer dated 30.01.2019. For some clarifications, the writ petition was listed on 23.07.2019 and was re-reserved on that date. This Court has, in fact, relied upon the report of the District



Rev.Aplw(MD)No.106 of 2023

Revenue Officer dated 30.01.2019, categorizing the encroachments into five categories, in the order dated 23.10.2019. But this categorization of encroachments into five categories is available in the earlier report of the District Collector dated 26.03.2018, for which, the review applicants have also made their objections in the writ petition itself. Therefore, the contention raised by the review applicants lacks merit.

13. Around 550 Acres of Temple lands are under encroachments. Some of the encroachers have obtained patta during the settlement proceedings under the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, some obtained patta during UDR proceedings and some obtained patta after UDR proceedings and some of them are in occupation without any records. Admittedly, all these lands have been granted to the Temple as an Inam and the same is available in the Inam Register of the year 1912. This Temple is under the control of Hereditary Trustee and it is reported that the Hindu Religious and Charitable Endowments Department has not appointed any Executive Officer to the Temple till 2015. Therefore, it appears that there



was some mismanagement and the Temple lands were allowed to be transferred in the name of individuals.

14.The properties conferred to the Temple are the properties of the deity. Since the deity is a perpetual minor in the eye of law, the Court, as *parens patriae*, has jurisdiction to protect the deity and its properties. There cannot be any question of limitation on Temple lands, as per Section 109 of the Hindu Religious and Charitable Endowments Act. Therefore, this Court disposed of the writ petition with a direction to the Temple Administration / Hindu Religious and Charitable Endowments Department to take its recourse by filing necessary applications before the competent authority / civil Court, as the case maybe, depending upon the nature of encroachment.

15.The review applicants claim that they fall under category IV. For the encroachments stated in category IV, it has been reported that the patta has been mutated and this Court has issued a direction to the Temple authorities to initiate proceedings under Section 78 of HR & CE



Act and to proceed further. This Court has directed the aggrieved parties to challenge the same, in the manner known to law, by approaching appropriate forum, if so advised and also directed the appellate authority to decide the appeal, if any filed, within a stipulated time frame.

16.This Court has explicitly mentioned that if anybody is aggrieved by the action taken by the Authorities, it is open to them to raise their objections before the appropriate forum and establish their case, in the manner known to law. The rights of the review applicants has not been curtailed or they have not been evicted straightaway.

17.Learned Senior Counsel for the review applicants, after his elaborate arguments, has also confined his relief to his right to agitate in the suit or application, if any, filed by the Hindu Religious and Charitable Endowments Department. That right is always there and in fact, this Court has also protected their rights, explicitly, in the order dated 23.10.2019.



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18. The power of Courts in matters of review is very limited. Such power can be exercised only when there is an error apparent on the face of the record and in that event if an order is not reviewed, it would amount to miscarriage of justice. For the said proposition, this Court may usefully refer to the decision of a Division Bench of this Court, in *Union of India, Rep. by the Senior Divisional Commercial Manager, Chennai, Vs. The Registrar, Central Administrative Tribunal, Madras Bench*, reported in *CDJ 2014 MHC 241*, wherein the Division Bench has made a complete survey of several decisions of the Supreme Court, on this question, and has ultimately held as follows:-

"10. In yet another Judgment reported in 2013 (8) SCC 320, [*Kamlesh Verma Vs. Mayawati and others*], the Hon'ble Apex Court, after examining various Judgments passed earlier has held as follows:

"12. This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually



covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

In the above Judgment, the Hon'ble Apex Court has laid down the principles as under:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the principles:

20. Thus, in view of the above, the following grounds of review are maintainable, as stipulated by the statute:

20.1 When the review will be maintainable:-

(i). 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;

(ii). Mistake or error apparent on the face of record;

(iii). Any other sufficient reason.

The words 'any other sufficient reason' has been



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interpreted in *Chhajju Ram Vs. Neki*, AIR 1922 PC 112 and approved by this Court in *Moran Mar Basselios Catholicos Vs. Most Rev.Mar Poulose Athanasius & others* [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 Vs. Sandur Manganese & Iron Ores Ltd., ors.*, 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.



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(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.*

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

19. Very recently, a Division Bench of the Hon'ble Supreme Court, headed by Hon'ble Mr. Justice M.M. SUNDRESH, in *State of Telangana and Others v. Mohd. Abdul Qasin (Died) Per Legal Representatives [(2024) 6 SCC 461]*, has reiterated the power and scope of review. The relevant portions are extracted as under:-

"24. Section 114 read with Order 47 Rule 1 CPC, 1908 is verbatim similar to Section 623 CPC, 1877, except for the Explanation to Order 47 Rule 1 which was added by way of an amendment in the year 1976. Section 114 CPC, 1908 speaks of the circumstances, instances and situations under which a review can be filed. The words "as it thinks fit" cannot be interpreted to mean anything beyond what is conferred under Order 47 Rule 1. In other words, Section 114 has to be read along with Order 47 Rule 1. While they are to be read together, Section 114 is more procedural, whereas Order 47 Rule 1 is substantially substantive.



25. The words “due diligence”, though one of fact, places onus heavily on the one who seeks a review. ...

26. Mistake or error apparent on the face of record would debar the court from acting as an appellate court in disguise, by indulging in a re-hearing. A decision, however erroneous, can never be a factor for review, but can only be corrected in appeal. Such a mistake or error should be self-evident on the face of record. The error should be grave enough to be identified on a mere cursory look, and an omission so glaring that it requires interference in the form of a review. Being a creature of the statute, there is absolutely no room for a fresh hearing. The court has got no role to involve itself in the process of adjudication for a second time. Instead, it has to merely examine the existence of an apparent mistake or error. Even when two views are possible, the court shall not indulge itself by going into the merits.

27. The material produced, at this stage, should be of such pristine quality which, if taken into consideration, would have the logical effect of reversing the judgment. Order 47 Rule 1CPC, 1908 indicates that power of review can be exercised by courts, in three different situations, but these occasions ought to be read in an analogous manner. In other words, they should be read in a manner to mean that a restrictive power has been conferred upon the court. As stated, the words “for any other sufficient reason” ought to be read in conjunction with the earlier two categories reiterating the scope. Being a judicial discretion, it has to be exercised with



Rev.Aplw(MD)No.106 of 2023

circumspection and on rare occasions. It is a power to be exercised by way of an exception, subject to the rigours of the provision."

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20.In view of the ratio referred above and in view of the discussions made supra, this Court does not find any error apparent on the face of the record and as such, there is no scope for reviewing the order dated 23.10.2019 made in WP(MD)No.64 of 2018.

Accordingly, this review application stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[P.V.,J.] [B.P.,J.]
24.01.2025

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

1.The Commissioner of Survey and Settlements,
Chepauk, Chennai – 600 005.



Rev.Aplw(MD)No.106 of 2023

- 2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
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Rev.Aplw(MD)No.106 of 2023

10.The District Revenue Officer,
Karur District, Thanthonimalai,
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Rev.Aplw(MD)No.106 of 2023

P.VELMURUGAN, J.
and
B.PUGALENDHI, J.

gk

Rev.Aplw(MD)No.106 of 2023

24.01.2025