
(2011) 07 MAD CK 0233

In the Madras High Court

Case No : Review Application (MD) No. 10 of 2011 in Writ Appeal (MD) No. 771 of 2010

Mukkalathor Sanga Abiviruthi Elementary School

APPELLANT

Vs

The Tahsildar

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Tamil Nadu Public Building (Licensing) Act, 1965 — Section 2(7)

Citation : (2011) 07 MAD CK 0233

Hon'ble Judges : P.P.S. Janarthana Raja, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : G.R. Swaminathan, for the Appellant; K. Mahendran, Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.P.S. Janarthana Raja, J.—This Review Application has been filed challenging the order dated 12.11.2010 passed by this Court in W.A.(MD) No. 771 of 2010.

2. The brief facts arising out of this Review Application are as under:

From the records, it is seen that one Irulappa Thevar, grandfather of Balanathan, said to be the Secretary of the Petitioner-school, had started an elementary school in Keezha Uppilikundu, Kariapatti Taluk, Virudhunagar District and the said school has been in existence for more than 60 years from the year 1952. There was some dispute between the villagers and a Civil Suit was filed and thereafter, the school had come under the direct payment system, from the year 1972. Till the year 2002, the school has been managed by the Department of Education, directly. There after, the said Balanathan had taken steps to revive the educational agency for managing the said school. While so, the Respondent had passed an order on 25.08.2007 declining to grant building license for the school on the ground that it is situated in a land that has been classified in the Revenue Records, as "Kanmoi Poramboke". The said order was challenged before this

Court in W.P.(MD) No. 9060 of 2007 and the same was dismissed. However, the writ appeals filed in W.A. Nos. 17 and 18 of 2009 had been allowed on 01.07.2009 by way of a common order. While disposing of the same, the Division Bench of this Court remitted the matter back to the Respondent directing him to pass fresh orders. Consequent to the same, the Respondent had passed an order dated 05.09.2009 rejecting the request of the Petitioner based on the same ground that the school in question had been in existence in a land classified as "Kanmoi Poramboke". Thereafter, the Petitioner filed another writ petition in W.P. No. 9086 of 2009 and the same was also dismissed by this Court by order dated 23.12.2009. Later, a writ appeal was also filed in W.A.(MD) No. 46 of 2010 and once again this Court set aside the order of the Respondent, and it is seen that once again the Respondent rejected the request of the Petitioner. Thereafter, the Petitioner filed W.P. No. 6992 of 2010 challenging the impugned order of the Respondent dated 15.05.2010. After considering the relevant facts, this Court dismissed the writ petition. Further it is stated that the said Balanathan, who is said to be the Secretary of the Petitioner-school is not in a position to show that he is the owner of the land, in which the school in question is located. Therefore, this Court was of the view that it cannot be said that the impugned order passed by the Respondent dated 15.05.2010 is arbitrary or erroneous in the eye of law and accordingly dismissed the writ petition. While dismissing the writ petition, the Court imposed an exemplary cost of Rs.5,000/- on the Petitioner to be paid to the Chief Justice Relief Fund.

3. Aggrieved by the said order, the Petitioner herein filed an appeal before this Court in W.A. No. 771 of 2010. This Court, after hearing both the sides, dismissed the writ appeal and confirmed the order of the learned Single Judge dated 08.10.2010, on the ground that the revenue authorities have declined to grant Public Building License for the school on the ground that it is situated in the land that has been classified in the revenue records as "Kanmoi Poramboke". Further, in respect of the cost, the Division Bench, following the various judgments of the Supreme Court, in paragraph-24 of the judgment, refused to interfere with the order of the learned Single Judge imposing the cost of Rs. 5,000/-.

4. Challenging the order passed by this Court in W.A.(MD) No. 771 of 2010 on 12.11.2010, the Petitioner has filed the present Review Application. When the matter came up before this Court, this Court dismissed the Review Application on the ground that it is not maintainable since the Petitioner has not paid the cost. Thereafter, it was restored as the petitioner paid the cost subsequently.

5. Learned Counsel for the Petitioner contended that the refusal to grant Public Building License on the ground that the school is situated in Kanmoi Poramboke would run counter to the earlier Division Bench judgment rendered in W.A. Nos. 17 and 18 of 2009. Further it was contended that the requirement of production of title is unnecessary in view of the special definition of the term "owner" as set out in Section 2(7) of the Tamil Nadu Public Building License Act. Therefore, the learned Counsel for the Petitioner requested the Court to review the order

dated 12.11.2010 made in W.A.(MD) No. 771 of 2010.

6. Learned Counsel for the Respondent contended that the Division Bench has considered all the facts and circumstances of the case correctly and dismissed the writ appeal. Further, he contended that the counsel for the Petitioner is trying to argue the whole matter once again. Therefore, the counsel for the Respondent has submitted that the Review Application is not maintainable.

7. Heard the counsel and perused the materials available on record. The arguments of the counsel and also the grounds raised in the Review Application do not reveal that there is any valid material to review the matter. It is only to re-argue the matter on merits. The points raised herein have already been argued before the Division Bench and the Division Bench also considered the same and rendered the judgment. If the Petitioner herein is aggrieved by the judgment in the writ appeal, he has to prefer an appeal against that. Without resorting to the same, in the pretext and guise of review, the Petitioner is trying to re-argue the matter on merits. Further, for the purpose of reviewing the order, the Petitioner has to point out that there is any error or mistake apparent on the face of the record. Further the Petitioner is unable to point out that there is any discovery of new and important matter or evidence which, after the exercise of due diligence, could not be produced by the Petitioner at the time when the matter was taken up and disposed of. Further, there is no sufficient reason for reviewing the judgment made in the writ appeal. The Petitioner has failed to establish the valid reason for reviewing the matter.

8. The scope of review was considered by the Supreme Court in the case of *S. Bagirathi Ammal Vs. Palani Roman Catholic Mission*, wherein it has been held as under:

5. Since we have already narrated the case of both the parties in the paragraphs supra, there is no need to traverse the same once again. Before considering the rival claims made by both the parties, it is useful to refer the provisions under Order XLVII Rule 1 CPC relating to Review which read as under:

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 of due diligence, was not within his knowledge or could not be produced by him at the time when the decree as passed or order made, or on account of some mistake or error apparent on the face of the record, or 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 of 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.

A reading of the above provision makes it clear that review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the court which passed the decree or order. The provision also makes it clear that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

From a reading of the above judgment it is clear that only under certain circumstances, review is permissible.

9. After considering the principles enunciated in the above judgment of the Supreme Court, we are of the view that no case has been made out by the Review Petitioner to review the judgment impugned in this Review Application.

10. In the result, the Review Application is devoid of merits and accordingly the same is dismissed. No costs.