(1981) 11 MAD CK 0003

In the Madras High Court

Case No : Civil Revision Petition No. 2547 of 1980

Narayanan APPELLANT

Vs

Sri Sundaravinayagar Devasthanam RESPONDENT

Date of Decision : 19-11-1981

Acts Referred:
Madras City Tenants Protection Act, 1922 — Section 11, 9

Citation : (1982) ILR (Mad) 397

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : T.L. Rammohan, S.D. Ramalingam and N. ayaraman, for the Appellant; N.P.M. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Swamikkannu, J.—A part of the temple has been made the subject matter of a petition u/s 9 of the City Tenants Protection Act by the

tenant in a subsequent suit viz., Original Suit No. 197 of 1978 on the file of the learned District Munsif, Chingleput, wherein the tenant had made

such a request in his petition Interlocutory Application No. 187 of 1979 claiming that he has got the right to purchase the land in question, the

possession of which has been sought now under Original Suit No. 197 of 1978 by the temple authorities. The plea that is put forward by the

revision Petitioner Defendant is that there are enough space for constructing a temple for Navagraham inside the premises of the temple and as

such, the portion now asked for, if it is to be held as a temple land, will not be decreed in favor of the Plaintiff, and what is more, as Defendant

tenant, he is entitled to get the portion of the land said in his favor, is the vehement contention that had been made by the revision Petitioner both before the Courts below as well as here. It is relevant in this connection to note that there-had already been a judgment with respect to this aspect,

the certified copy of which has been marked as exhibit A-3. In paragraph 14-of exhibit A-3, this aspect had been decided upon viz., the revision

Petitioner herein cannot claim himself to be entitled,to the provisions of Section 9 of the City Tenants Protection Act and get the land in question

sold in his favour. As a matter of fact, Mr. M. Srinivasan, learned Counsel for the Respondent very much relies on the decision reported in

Srinivasamurthy Mandiram Vs. Vaduvambal, in support of his contention that the portion in Interlocutory Application No. 187 of 1979 is barred

by virtue of the judgment in Original Suit No. 241 of 1976, a copy of which is marked as exhibit A-3. It is relevant in this connection to note that

Original Suit No. 241 of 1975 was filed in the District Munsif''s Court, Chingleput, on the very same allegation that the present revision Petitioner

had to vacate and the said suit was dismissed as no suit notice as per the provision of Section 11 of the City Tenants Protection Act was issued.

Nevertheless, it is submitted by Mr. M. Srinivasan- that in as much paragraph 14 of exhibit A-3 disentitles the present revision Petitioner from

invoking the benefits claimed by him u/s 9 of City (SIC) Protection Act, he cannot once again come forward with the-Ben-prayer in a subsequent

suit that had been filed by the Devesthanan. I am unable to reject this (SIC) as (SIC).

2. Mr. Subbiah, learned Counsel appearing for the revision Petitioner in his interesting argument has submitted the when enough extent of land

belonging to the temple is available, nothing is lost by the temple if a portion of the said temple iS (SIC) in favors of the revision Petitioner as the

provisions of Section 9 of the City Tenants Protection act becacause the evidence of the Petitioner herein as D.W. 1 has not been very much

brought down in its value in any effective cross examination and the mere assertions of both P.W. 1 and 2 together with the contents of exhibit A-5

plan cannot be held to be adequate to uphold the decision of the Courts below in (SIC)the herein from getting the benefit uder the provision of

Section 9 of the City Tennats Protection Act.

3. In this regard, it is relevant to note that the decision in Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devastanam Vs. S.V. Marimuthu, .

is an authority for following proposition:

The Trusteeship of a Hindu temple is an honorany office, with a mere right of managment of the institution and its properties with no benefical

interest in the (SIC). But circumstances may arise which will confer on the trustee a power to alienate the endowed properties, that is, where their

is need or benefit. But even under those circumstances a distinction has to be made betweeen two types (SIC) which a temple may possess(1) the

site of the tenmple (SIC) and appartenances (2) other properties owned by the temple. There will be no power under any circumstances in the

trustees to sell or otherwise alienate the first category of the property. The second class of properties can however be alienated in the

circumstances specified above. Vidyapruathirthaswatni v. Vidya Nidhi Thirtha Swami (1904) ILR Mad. 435 and Srinivasachariar v. Eyalappa

Mudaliar AIR 1922 PC 325.

The Mutavalli under the Mohamedan Law, though he has no power of his own to sell the endowed property even for necessity, will have such

power if the Court authorities him to sell. In other words, while in the case of a Hindu religious trust, the trustee will have himself a power to sell it

in certain circumstances, a mutavalli of wakf property can do so if he is so authorised by Court. But even so it would not be competant to him to

sell the subject matter of the wakf like mosque, burial ground, etc., as distinguished from the property dedicated therefor.

A sale u/s 9 can never be regarded as one for the benefit of the institution; even if there is necessity, a provision which comples a sale at a price

which might turn out to be less than the market price cannot be regarded as justified. Therefore the option to purchase conferred on the tenant

must be irrespective of any benefit to the institution. The Legislature evidently thought that there was a superior equity in favour of the tenant and he

should be enabled to purchase the property where he comes within Section 9 of the Article To construe the section as authorising a sale only in

cases of necessity would be practically to make it a dead letter so far as vacant lands belonging to religious institutions are concerned. It is not

correct to say that Section 9 could be invoked by the tenant only if there is to be either necessity or benefit to the institution by the sale. It would be

enough if the tenant of the land had put up a superstructure prior to the date of the Act in the case where the land is not part of the temple or

mosque, etc. But where it is shown that the original ease was beyond the trustee''s powers Section 9 cannot obviously apply. The Vasudeva Pillai

Trust Vs. Neelavathy Ammal, overruled.

Ramachandra Iyer C.J., has observed in the said decision as follows:

The learned Judge was alive to the fact that the decision of this Court in Doraivelu v. Natesa ILR (1925) Mad. 761 (FB) on the terms of the

Explanation as it then stood did not place any impediment in the way of the tenant holding under trustees ,to obtain the benefit of the Act. But he

held that the language of the re-enacted Explanation justifies the view that there could be a sale under section''9 of trust property only if there was

necessity. It should, however, be remembered that the Madras Act VI of 1922 did not repeal the Explanation, it merely added to it what we have

referred to as the second limb. As we shall show presently the re-enacted Explanation attempted only to put the right of the tenant on a clearer

basis. In other words, it accepted the law as laid down by the Courts and made it clear. Further, it appears to us that Section 9 itself is inconsistent

with the existence of justifying circumstances. No sale under the provisions of Section 9 of the Act can be considered to be a benefit of the trust.

The trustee is not given an opportunity to exercise his discretion; on the other hand, he is to submit to the option of the tenant and that too at a

price which is not the market price. Prior to the amendment of the Act in the year 1960, the price for which the property was to be sold, was the

minimum one during the seven years proceeding the application for purchase. Even, after the amendment, it is not exactly the market price that has

to be paid to the landlord, but only the average price during preceding three years. Again the terms of the section do not require that the trustee of

the institution should be compelled to sell the land only if there is necessity for the same.

We shall now refer to the antecedent history of the ''Explanation'' before it assumed its present form. As originally enacted in the year 1922, it

reads:

land means the interest of the landlord in the land and all other interests which he can convey under any power.

In Parthasarathi Iyengar v. Doraiswami Naicker (1923) ILR Mad. 823. Spencer and Venkatasubba Rao JJ-, held that a tenant on occupation of

land belonging to a temple or mosque could hot enforce a compulsory sale of the land u/s 9 of the Madras City Tenants Protection Act. The main

reason given in support of that conclusion was the absence in the enactment of any provision in the statute for investment of the price. From that it

was concluded that the legislature could not be held to have intended to endanger the preservation of trust properties by sale of including them

within the ambit of the definition of ''land'' which could be conveyed under the trustee''s power. This decision was, however overruled by a Full

Bench decision in Doraivelu v. Natesa ILR (1925) Mad. 761 (FB). Coutts Trotter C.J., delivering the leading judgment of the Full Bench

observed:

But it seems to me that it is wrong to seek to control a statute which is obviously intended to overrule the oridinary law by general considerations

imported by the Hindu Law or what is called the common law of India. A trustee landlord can convey the interest of the trust in certain given

circumstances. Two of those circumstances have been already referred to necessity and benefit for the trust and I think there is added a further one

by the new Act III of 1922. namely, when a tenant has been in possession of the land and has put up a superstructure of the land and to eject

whom would be in certain circumstances plainly inequitable without a compensation and in other circumstances such as the one contemplated by

the section would be inequitable without giving him an opportunity of acquiring the land for himself on payment.

The observations extracted above has settled the question that Section 9 in its application or to religious or chartitable endowments, would apply

to all these properties which the trustees there of can sell in an particular event, it is not further necessary that the circumstahces justifying a sale by

the trustee need actually exist. After the decision of the Full Bench the Explanation to Section 9 was recast assuming its present form by Madras

Act VI of 1926. In the statement of objects and reasons for the amendment it is said.

The imperfect explanation of the word land under Section9has led to considerable litigation In R.C. No. 6of 1922 Spencer J., and

Venakatasubba Rao J.,opined that Section 8 was not applicable to trust lands.

This decision has been overruled by the Full Bench in C.C.C.A.

No. 40 of 1922. The explanation now substituted follows this decision of the Full Bench so as to make the point absolutely free from doubt.

But there is no need in this case to resort to any extraneous aid for the construction of the Explanation to the section. The Full Bench decision

construed it in its original form as referring to the class of properties that would come within Section 9. The terms of the re-enacted explanation

also indicated that the provsion was intended as definitive or descriptive of the interest which the landlord would be required to sell rather than to

define or prescribe the conditions necessary for the sale of the land, like necessity, benefit, etc. Therefore no change in the law appears to have

been intended by the explanation to the section as recast by Act 6 of 1926 As we have pointed out, a sale u/s 9 can never be regarded as one for

the benefit of the instituion; even if there is necessity, a provision which compels a sale at a price which might turn out to be less than the market

price cannot be regarded as justified. Therefore the option to purchase conferred on the tenant must be irrespective of any benefit to the institution.

The legislature evidently thought that there was a superior equity in favour of the tenant and he should be enabled to purchase the property where

he comes within Section 9 of the Act. To construe the section as authorising a sale only in cases of necessity would be practically to make it a dead

letter so far as vacant lands belonging to religious institutions are concered. We are therefore with great respect unable to share the view expressed

by Jagadisan J., in The Vasudeva Pillai Trust Vs. Neelavathy Ammal, that Section 9 could be invoked by the tenant only if there is to be either

necessity or benefit to the-institution by the sale. In our opinion none of these circumstances need exist, it would be enough if the tenant of the land

had put up a superstructure prior to the date of the Act in the cases where the land is not part of the temple or mosque etc. But where it is shown

that the original lease was beyond the trustee''s powers, Section 9 cannot obviously apply.

The explanation to Section 9 was then attacked as contravening the provisions of Articles 19 and 14 of the Constitiution. In view of the importance

of the question we gave notice to the learned Advocate General and we are indebted to him for his assistance. The first ground of attack on

Section 9 was that as it compelled the landlord to sell the land at a price less than the market price, it would amount to an unreasonable restriction

as the individual''s right to enjoy his property. The provision in Madras Act III of 1922 as originally enacted, directed the Court to fix the price

according to the market value of the land. That provision was amended was by Act 6 of 1926. which directed that the price should be the lowest

market value prevalent within seven years preceding the date of the order. Prima facie such a provision appears to be ureasonable. If that provision

is regarded as violative of Article 19(lXf)i the original provision which obliged the tenant to pay the market price and which was repealed by Act 6

of 1926 will stand restored.

It is a recoginised rule of construction that where a later statute which imposes a burdan or condition is found to be ultra vires, the ortgiinal

enactment will in the absence of indication of a contrary intention as it stood before such additions or alteration, would be revived. But it is

unnecessary to pursue the matter as Section 9 has been reenacted by Madras Act 13 of 1960 under which the price is to be fixed on the average

market value of the property during the three years immediately proceeding the date of the order. We consider that this provisions is a reasonable

one. Even if the compelled sale is regarded as a restriction on the owner''s right, it should be considered as a reasonable one intended be achieve

the object which the legislature had in view, namely, of doing justice to the tenant who had put up a superstructure on the land leased out to him in

the hope that he would not be evicted. It is not impossible to conceive of cases and here the three years''s average might even be in favour of the

landlord himself. It is not always that the price of the land rises from year to year. Such a formula is found in other enactments, like to Electricity

Undertaking Acquisition Act, etc., In Vajrapwi v. New Theatres Car-natic Talkies Ltd. (1969) 2 MLJ 469 a Bench of this Court held that Section

9 of the Act was not opposed to Articlefl9(l)(f) of the Constitution, but the attack upon the validity of the provision in that case was not based

upon the compensation allowed. As we consider that the provision for fixation of price at three years average is reasonable, Section 9 cannot be

held to contravene Article 19 of the Constitution.

4. Relying on the above observations of Ramachandran Iyer C.J.,Mr. Subbiah,

learned Counsel for the revision Petitioner contends that the tenant

revision Petitioner herein has asked for a portion of the only for sale in his favour and that will not in any way contravene any of the sentimates of

the worshippers of the temple nor it will stand in the way of any Navagraha sub-temple being erected in the said promises. This Court had gone

through the entire oral evidence adduced through P.W.''s 1 and 2 as well as D. W. 1. It had also gone through exhibit A-5 plan. Though the

ascope of this revision is very very narrow, yet, in view of the importance of the question involved, thisCourt has scrutinised the entire records in

this case Exhibit A-5 shows that there is a Santhana Vinayagar temple on the northern end of the premises in question. There is a Man dapam

adjoining the same. There is a Modai on the south-western side of this Santhana Vinayagar temple. Anjaneya temple is on the southern side side of

the Santhana Vinayagar temple. It is claimed by the revision Petitioner herein that he has erected a hut on the southern side of this Anjaneya

Temple at a distance of about 10'' with a length of 18''0"" and 10''9"" extending towards south. The entire site, which is now claimed to be sold in his

favour by the revision Petitioner is marked with the letters ABCD Both the sides AB and CD are of the dimension of 30'' and ADBC 22''. It is this

extent of a rectangular site that is now repaired and claimed by the tenant to be sold in his favour though it forms exclusively part of the entire

temple in which there is now shown in this plan exhibit A-5 that Santhana Vinayagar Temple and Anjaneya Temple are situate. It is the evidence of

P.W.I that in the place where the Defendant''s hut is actually in existence that the temple . authorities want to erect a sub-temple. Navagraham to

be installed for worship of the temple going public

5. Now, an interesting and at the same time an important question arises for consideration. When a temple land, in other words, the land for which

the temple claims ownership, is the subject matter of a Section 9 of the City Tenants Protection Act petition by a person who claims himself to be a

tenant of the temple, is it not necessary that the Hindu Religious and Charitable Endowment authorities should be given notice. Is it not that such a

notice is one which will alert the authorities concerned viz., the authorities who are administering the administration of the temple, so that at the very

initial stage itself when the im- movable property of a particular temple is being sought to be the subject matter of Section 9 petition, either on their

own accord they can impled themselves as parties viz.,. they can file an application to implead themselves as parties to the proceedings, or the

person who seeks the benefits u/s 9 of the City Tenants Protection Act himself can implead them as parties to such proceedings so that even if he

is to be given an order in his faybur, it will not be later on attacked as one wothout putting the autho- rities concerned on notice. These are all

certainly mattery, which require deep consideration especially when there is no provision in the City Tenants Protection Act relating to the same or

any rule imbedded under this enactment.

6. It is also relevent in this connection to note that u/s 11 the non-service of copies of notices to the Commissioner may be regarded, as a mere

irregularly as it is not made a condi- tion precedent to the institution of the suit and it was so held in Rao Bahadur V. Ranganatham Chettiar and

Others Vs. Mariappa Mudali and Others, . The notice contem- plated by Section 11 under its terms is not merely a private notice prior to the suit

but somewhat partakes the character of public notice. It was held in Abdul Sukar Sahib v. Geethammat (1977) INLJ 125 that u/s 11 of the Act,

the landlord is obliged to send A copy of his suit notice to the executive authority of the municipality and thereby it becomes part of the public

records.

7. What we are concerned in the instant case is, when the tenant, who pays Rs. 3 as rent for the vacant site, in which he Claims to have erected a

superstructure viz., but, caims the benefit of Section 9 of the City Tenents Protection Act, is it not necessary that notice has to be sent to the H.R.

& C.E. authorities who are the only authorities in the state of Tamil Nadu to superviseand also have administrative control over the alienation of the

temple lands. This Court has dealt with the above aspects in order to impress that if a provision enabling the authorities concerned to put on notice

the administration concerned viz., the H.R. & C.E. Department, with respect to a claim made u/s 9, especially when the land in question belongs to

a temple or a religious institution or trust or whatever institution that is contemplated under the provisions of the Tamil Nadu Hindu Religious and

Charitable Endowment Act, it would be certainly in the interest and welfare of the institution in maintaining and keeping the land belonging to it intact, so that the same can be administered of effectively. Though this Court is not for seeing whether the administation is effectively done or not.

this Court is constrained to observe as above because in an enactment which provides the tenant to purchase the property of the landlord provided

he satisfies certain conditions by virtue of Section 9 of the City Tenants Protection Act, and if that landlord is a temple or the trustees of the

administrative committee of the temple as the case may be, it must be incumbent on the person who seeks to get the interest in the immovable

property alienated in his favour by virtue of Section 9, to give notice to the H.R. & C.E. authorities together with the Secretary to the Government

who control the H.R. & C.E. Department because ultimately the matter impinges on the very executive organ of the State. Therefore, the necessity

arises for notice being given not only to the H.R.

C.E. Department but also to the concerned Secretary to Government who deals with the H.R. & C.E. matters at the Government level.

8. Reverting back to the facts of the case and the points raised by either side, this Court has to observe that in this revision u/s 115 of the CPC the

question to be considered is whether the impugned order is vitiated by anything such as irregularity, illegality or failure to exercise the jurisdiction

vested with the Court or that had been actually exercised when it does not posseess. Mr. M. Srrnivasan, learned Counsel for the Respondent

relies on the decision reported in Srtnivasa-murthi Mandiram v. Vaduvambal (1969) 1 MLJ Mad. for the following proposition:

The doctrine of res judicata covers an adjudication both on factual as well as legal matters. That a different view of the law has been subsequently

taken will not affect the applicability of the doctrine.

There is nothing in the scheme of the Madras City Tenants Protection Act,1921, which bars the application of the doctrine of res judicata to an

order u/s 9 thereof. It may be that when the landlord files a second suit for ejectment, the tenant would have the right of filing an application u/s 9.

But the proceedings in this application would be governed by the principle of res judicata.

Veeraswami J., as he then was, observed in the above decision as follows:

It has been held in Vedachala Naicker Vs. P.K. Duraiswami Mudaliar, that having regard to the scheme of the Act, the application u/s 9 is independent of the suit and can be prosecuted even if the suit is withdrawn. Section -9A provides for an appeal from an order u/s 9. The very

question as to whether the Plaintiff in his capacity as a trustee of the institution, which is a Bajana Madam, is entitled to sell is raised over again as

between the very parties. It seems to me that merely because the view on which the previous order on the earlier application u/s 9 was based no

longer holds the field beeasue Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devastanam Vs. S.V. Marimuthu, takes a different view, it

does hot follow that it set the matter at large as between the parties. The doctrine of res judicata covers an adjudication both on factual as well as

legal matters. That a different view of the law has been subsequently taken will not affect the applicability of the doctrine. I am inclined, therefore,

to think that the Court below is not right in its view that the previous order did not operate as bar to an order on the subsequent application.

It is, however, argued that the fact that a different view of the law has been taken subsequently made a difference. I do not accept the contention.

The observation I have made earlier is an answer. Neither Annamalai and Co. Ltd. v. Cibgathullah Sahib (1955) 2 MLJ 653 nor Ramasami Reddi

v. Marudai Reddi ILR (1923) Mad. 453 in any way is of assistance to the Respondent. In the first of these cases, the earlier decision related to an

entire block of land with buildings thereon. This decision was held to be not res judicata on a subsequent occasion, where only a portion of the

land without building thereon was in question with reference to which Section 9 was invoked. In such circumstances, a Division Bench of this Court

held that the earlier decision did not operate as res judicata. There is no such change of the subject matter in the present case. So too, in the

second case cited, there was no final determination on the earlier occasion on the question of permanant tenancy in appeal. The Order of the trial

court was confirmed in appeal only on the ground of want of notice to quit. In that situation it was held that the earlier decision did not operate as

res judicata on the subsequent occation when the question of permanant tenancy was raised.

I do not think that there is anything in the scheme of the Act, which bars the application of the dectrine of res judicata to an order u/s 9. It may be

that when the Petitioner filed a second suit, the Respondent would have the right of filing an application u/s 9. But the proceedings in this application would be governed by the principle of res judicata. As I said, the decision on a similar or identical point as between the same parties

cannot be raised over again and the same decided, notwithstanding the fact that the earlier order was a wrong order. The petition is allowed. The

result of it is that the application u/s 9 will stand dismissed.

9. Mr. M. Srinivasan, learned Counsel for the Respondent relies on paragraph 14 of exhibitA-3, which reads as follows:

Issue No. 2 and Point No. 1 in I.A. No. 1367 of 1976 In view of my findings on Issue No. l,the Defendant is entitled to purchase the vacant site

u/s 9 of the Madras City Tenants Protection Act, generally. The suit site is in T.S. No. 706, measuring an extent of 22 north south 30 east to west,

and it forms part of the actual temple property. Therefore, it is contended on behalf of the Plaintiff that the Defendant is not entitled to purchase the

site which belongs to the temple and forms part of the temple. In aid, the learned Counsel for the Plaintiff invited my attention to a case reported in

Sree Siddhi Budhi Vinayakagar Sree Sundareswarar Devastanam Vs. S.V. Marimuthu, wherein their Lordships held that it would be enough if the

tenant of the land had put up a superstructure prior to the date of the Act, in the case where the land is not part of the temple or mosque, the tenant

is entitled to purchase the property. Their Lordship have made two distinctions regarding the properties owned by the temple, one is the site of the

temple. its building and appurtenances and the other is the properties owned by the temple. As far as the first category of properties are

concerned, there will be no power under any circumstances in the trustee to sell or otherwise alienate the first category of the property. The second

class of property can however be alienated in the circumstances, if it is proved that the tenant had put up superstructure, in the vacant land of the

temples property, before the Act was extended to that area. Admittedly, in this case the suit property is a site of the temple i.e., part of the temple.

Therefore, placing relience on the above decision, I hold that the Defendant is not entitled to purchase the suit property u/s 9 of the Madias City

Tenants Protection Act and there can be no order directing or compelling the landlord to sell the property u/s 9 of the Act. Therefore, if at all the

tenant, the Defendant herein, can ,claim only compensation u/s 3 of the Act. Hence, Issue No. 2 and the Point No. 1 in I.A. No. 1367 of 1975 are answered in favour of the Plaintiff.

According to Mr. M. Srinivasan, this aspect of the question had not been properly dealt with by the lower appellate Court, in that, in paragraph 5

of its judgment, it has observed as follows:

It was also held in the previous suit judgment dated 31st August 1976 in Original Suit No. 241 of 1975 on the file of the District Munsif Court,

Chingleput filed by the Plaintiff herein for declaration of its tittle to the suit property and other reliefs against the Defendant herein that the Defendant

has no right to purchase the site. The above suit was decreed for declaration of title to the suit property but the Court dismissed regarding the

prayer for recovery of possession on the ground that the suit was not brought after the expiry of three months after the issue of notices as

contemplated u/s 11 of the City Tenants Protection Act, exhibit A-3 i the certified copy of judgment. As already stated, the Defendant is not

entitled to purchase the suit property. Therefore, I see no ground to interfere with the findings of the learned District Munsif. The point is answered

against the Defendant.

10. On a careful and anxious consideration of the entire sube missions made by either side this Court finds that none of the points raised in the

grounds of revision can be upheld under the circumstances. It has been unequivocally proved beyond all reasonable doubt that the disputed

property is part of the actual temple for the reason that the portion claimed u/s 9 of the City Tenants Protection Act by the revision Petitioner as

well as the other portion in (SIC) dhana Vinayagar tempi and Anjaneya temple''s situste, form part of one and the onl T. S. number via., T. S. No.

706. I am therefore of the view that the courts below have not committed any irregularity or illegality warranting the interference of this Court under

the provisions of Section 115 of the Code of Civil Procedure.

11. Under the circumstances, there is no merit in this revision. The civil revision petition is dismissed, with costs.

