

(2010) 08 MAD CK 0338

In the Madras High Court

Case No : Review Application No. 53 of 2010 in Writ Petition No. 10911 of 2009

P. Someshkandar

APPELLANT

Vs

The District Collector, The Assistant Director, The Executive
Officer and Vijayan

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 226

Citation : (2010) 08 MAD CK 0338

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

Advocate : K.M. Vijayan for Fast Track Law Associates, for the Appellant; J. Raja Kalifulla, Government Pleader for Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J.—This review application has been filed by the petitioner seeking review of the judgment and order dated 20th October, 2009 passed in W.P. No. 10911 of 2009 whereby this Court dismissed the writ petition filed by the petitioner.

2. It appears that the petitioner filed the above mentioned writ petition being W.P. No. 10911 of 2009 for a direction on the first and second respondents to decide the complaint/petition and thereby to remove the pig farm run by the fourth respondent namely, Vijayan. The said fourth respondent also filed a separate writ petition being W.P. No. 13757 of 2009 for issuance of a writ of certiorari for quashing the order dated 17th July, 2009 passed by the first respondent for removal of the pig farm run by him. Both the writ petitions were disposed of by this Court in terms of the judgment and order dated 20th October, 2009.

3. The present petitioner alleged in the writ petition that the pig farm run by the fourth respondent is causing health hazard to the general public. The Executive

Officer of the first respondent-Chinnavedampatti Town Panchayat, Coimbatore issued notice dated 17th July, 2009 directing the fourth respondent to remove the pig farm. Further, it was contended that the fourth respondent cannot run the pig farm without the licence obtained from the town panchayat. A Division Bench of this Court, after hearing the learned Counsel appearing for the parties, came to the conclusion that the piggery unit run by the fourth respondent is not slaughtering any pig and that the waste of the pigs are disposed of in a hygienic manner and the pig farm is maintained without causing any health hazard to the general public. This Court also considered the different provisions of the Act and the Rules, and finally set aside the impugned notice dated 17th July, 2009 issued by the Executive Officer asking the fourth respondent to remove the pig farm.

4. The petitioner sought review of the judgment on the ground inter alia that neither the petitioner nor respondents 1 to 3 made clear submissions of the legal positions regarding the applicability of law of mandatory possession of licence for running the pig farm. In the interest of justice, therefore, the petitioner may be given an opportunity to clarify the legal position. The petitioner referred to some of the provisions of the Tamil Nadu District Municipalities Act, 1920 and submitted that the fourth respondent ought to have obtained licence under the said Act. It is, further, contended that by the complaint filed by the petitioner a request was made to the authorities to take necessary action in accordance with law for removal of the pig farm. Hence, the petitioner has every right to bring in to light the requirement of licence by the fourth respondent. It is submitted that there is apparent error on the face of the record and the judgment is liable to be reviewed. The petitioner, further, stated that this Court has committed error of law while taking a view that notice was mandatory under the Tamil Nadu Public Health Act from the Health Department to the officers of the respondent. Various other grounds have also been raised assailing the reasoning given by the Court in the impugned judgment.

5. We have heard the learned Counsel for the parties.

6. It is well settled principles of law that the power of review can be exercised for correction of mistake and not to substitute a view. A review cannot be treated as an appeal in disguise. The error contemplated under the Rules must be such which is apparent on the face of the record. An error would not require any long drawn process of reasoning on points where there may conceivably be two opinions. It is equally well settled that a wrong decision can be subjected to appeal to higher forum, but a review is not permissible on the ground that the Court proceeded on a wrong proposition of law.

7. In the case of Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , while discussing the scope of ambit of review as contemplated under Order 47 Rule 1 CPC, their Lordships observed:

8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In

connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleswar Sharma v. Aribam Pishak Sharma*, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the 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 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 power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

8. Recently, in the case of *Haridas Das Vs. Smt. Usha Rani Banik and Others*, , the Apex Court held:

13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in *Thungabhadra Industries Ltd. v. Govt. of A.P.* held as follows: (SCR p.186)

[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error...where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

9. On a plain reading of the provisions of Order 47 Rule 1 of the Code of Civil Procedure, and in the light of the principles laid down by the Supreme Court, we are of the definite opinion that the impugned judgment cannot be reviewed on the grounds stated by the petitioner in the review petition.

10. Hence, we do not find any reason to review the order passed by the Division Bench of this Court. This review application is dismissed. No costs.