P. Karuppa Konar and Others Vs The Chairman, The Tamilnadu Housing Board and Others
Krishnammal and Others Vs The Tamil Nadu Housing Board and The Government of Tamilnadu

Court: Madras High Court

Date of Decision: Oct. 5, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 153
Land Acquisition Act, 1894 â€" Section 11A
Supreme Court Rules, 1966 â€" Order 40 Rule 3

Citation: (2010) 1 MLJ 8

Hon'ble Judges: T.S. Sivagnanam, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: R. Thayagarajan, for and V. Gangadharan, for the Appellant; P.S. Raman, General, assisted by D. Veerasekaran and S. Kasikumar, for the Respondent

Final Decision: Dismissed

Judgement

Elipe Dharma Rao, J.
These petitions have been filed u/s 151 of the Code of Civil Procedure, praying to "modify" the common order

passed by this Court in Review Application Nos. 68 and 69 of 2007.

2. Challenging the notification issued u/s 4(1) of the Land Acquisition Act, in G.O.Ms. No. 799 Housing and Urban Development, dated

13.8.1982, the petitioners have filed W.P. Nos. 14235 of 1988 and 4079 of 1989. In the said writ petitions, though initially interim stay was

granted, the same was vacated by a learned single Judge on 7.1.1994 and 20.2.1994. Aggrieved, the writ petitioners have filed W.A. Nos. 258

and 1069 of 1994 and the First Bench of this Court, while taking up the said writ appeals along with the writ petitions themselves, has allowed

both the writ petitions, by the judgment dated 1.4.1998. The said decision of the First Bench of this Court was challenged before the Honourable

Supreme Court by the respondents in SLP (Civil) Nos. 13458 to 13462 of 1998 and since the learned Counsel for the petitioners before the

Honourable Supreme Court stated that they wanted to move the High Court for review of the judgment under appeal, the said SLPs. were

dismissed by the Honourable Supreme Court on 31.8.1998. Thereupon, the respondents have filed Review Application Nos. 68 and 69 of 2007.

Taking up the said Review Applications, after hearing elaborate arguments on either side and considering the matters on merits and in accordance

with law, we have allowed both the Review Applications, setting aside the common order of the First Bench dated 1.4.1998, since the said

judgment of the First Bench has come to be passed on misconception of law and facts. In these circumstances, now the present petitions have

been filed by the petitioners, praying to "modify" the order passed by us on 4.10.2007.

3. When a question has been posed by us regarding the very maintainability of these petitions, the learned senior counsel appearing for the

petitioners has submitted that the Court can exercise its power u/s 151 CPC to vacate its own order obtained by fraud or misrepresentation and in

support of his arguments, the learned senior counsel for the petitioners relied on a judgment of the Honourable Apex Court in Dadu Dayal

Mahasabha Vs. Sukhdev Arya and Another, , wherein when an order of withdrawal of suit of a registered society was obtained from trial Court

by an unauthorised person by misleading the court that he was the elected Secretary of the Society and when the application made by the duly

elected Secretary for recalling the withdrawal order was rejected by the trial Court as not maintainable, the Honourable Apex Court has held that

''Court in exercise of power u/s 151 can vacate its own order obtained by fraud or misrepresentation."

4. The learned senior counsel for the petitioners has also pressed into service another judgment of the Honourable Apex Court in United India

Insurance Co. Ltd. Vs. Rajendra Singh and Others, . In this case, Awards of compensation were secured by claimants from Motor Accidents

Claims Tribunal by practising fraud and subsequent to the payment of amounts, the insurance company realised the fact of fraud and moved the

petitions purportedly under Sections 151, 152 and 153 of the CPC to recall such awards, but the Tribunal dismissed the petitions on ground of

want of power to review its own awards and the High Court also dismissed the writ petition filed by insurance company keeping it open for it to

resort to any other remedy that may be available. In those circumstances, the Honourable Apex Court has held that both the Tribunal and the High

Court erred in refusing to go into the matter, no other remedy being available to the insurance company and further held that the Tribunal has

power to recall its own award if it is convinced that it had been obtained by practising fraud or misrepresentation.

5. By these arguments, the learned senior counsel attempted to brand the order passed by us in the Review Applications as being obtained by

fraud by the petitioners therein, who are the respondents herein. Before deciding that aspect of the case, we place on record that a similar factual

position, like the one in case on hand, arose before the Honourable Apex Court in Delhi Administration Vs. Gurdip Singh Uban and Others, ,

wherein also after a final order has been passed in the review application, a petition has been filed by the petitioner for ''clarification/modification''

of the order passed in the review application. The Honourable Apex Court has deprecated such an illegal practice being adopted by the clients. In

the process, the Honourable Apex Court has held in the above said judgment as follows:

17. We next come to applications described as applications for ""clarification"", ""modification"" or ""recall"" of judgments or orders finally passed. We

may point out that under the relevant Rule XL of the Supreme Court Rules, 1966 a review application has first to go before the learned Judges in

circulation and it will be for the Court to consider whether the application is to be rejected without giving an oral hearing or whether notice is to be

issued.

Order XL Rule 3 states as follows:

3. Unless otherwise ordered by the Court, an application for review shall be disposed of by circulation without any oral arguments, but the

petitioner may supplement his petition by additional written arguments. The Court may either dismiss the petition or direct notice to the opposite

party....

In case notice is issued, the review petition will be listed for hearing, after notice is served. This procedure is meant to save the time of the Court

and to preclude frivolous review petitions being filed and heard in open court. However, with a view to avoid this procedure of ""no hearing"", we

find that sometimes applications are filed for ""clarification"", ""modification"" or ""recall"" etc. not because any such clarification, modification is indeed

necessary but because the applicant in reality wants a review and also wants a hearing, thus avoiding listing of the same in chambers by way of

circulation. Such applications, if they are in substance review applications, deserve to be rejected straight away inasmuch as the attempt is

obviously to bypass Order XL Rule 3 relating to circulation of the application in chambers for consideration without oral hearing. By describing an

application as one for ""clarification"" or ""modification"", - though it is really one of review - a party cannot be permitted to circumvent or bypass the

circulation procedure and indirectly obtain a hearing in the open court. What cannot be done directly cannot be permitted to be done indirectly.

18. We, therefore, agree with the learned Solicitor General that the Court should not permit hearing of such an application for ""clarification"",

modification"" or ""recall"" if the application is in substance one for review. In that event, the Court could either reject the application straight away

with or without costs or permit withdrawal with leave to file a review application to be listed initially in chambers.

19. What we have said above equally applies to such applications filed after rejection of review applications particularly when a second review is

not permissible under the Rules. Under Order XL Rule 5 a second review is not permitted.

6. In Common Cause v. Union of India : (2004) 5 SCC 222, Lahoti, J. (His Lordship as the learned Chief Justice of India then was) speaking for

a Division Bench observed:

2. ...We are satisfied that the application does not seek any clarifications. It is an application seeking in substance a review of the judgment. By

disguising the application as one for ''clarification'', the attempt is to seek a hearing in the open court avoiding the procedure governing the review

petitions which, as per the rules of this Court, are to be dealt with in chambers. Such an attempt on the part of the applicant has to be deprecated.

7. Following the above judgment, in Ram Chandra Singh Vs. Savitri Devi and Others, , the Honourable Apex Court has further held:

It is now well settled that an application for clarification or modification touching the merit of the matter would not be maintainable.

8. Further, in A.P.S.R.T.C. and Others Vs. Abdul Kareem, , the Honourable Apex Court has held as follows:

5. The petition is in essence and substance seeking for a review under the guise of making an application for clarification apparently being fully

aware of the normal procedure that such applications for review are not, unless the Court directs, listed for open hearing in Court, at the initial

stage at least, before ordering notice to the other side and could be summarily rejected, if found to be of no prima facie merit. The move adopted

itself is unjustified, and could not be countenanced also either by way of review or in the form of the present application as well. The nature of relief

sought, and the reasons assigned are such that even under the pretext of filing a review such an exercise cannot be undertaken, virtually for

rehearing and alteration of the judgment because it is not to the liking of the party, when there is no apparent error on record whatsoever to call for

even a review. The said move is clearly misconceived and nothing but sheer abuse of process, which of late is found to be on the increase, more

for selfish reasons than to further or strengthen the cause of justice. The device thus adopted, being otherwise an impermissible move by mere

change in nomenclature of the applications does not change the basic nature of the petition. Wishful thinking virtually based on surmises too, at any

rate is no justification to adopt such undesirable practices. If at all it should be for weighty and substantial reasons.

9. Therefore, from the above judgments of the Honourable Apex Court, it is clear that such petitions filed for clarification/modification which are in

essence and substance seeking for a review of the order and touching the merits of the matter are not at all maintainable. Further more, as has been

held in no uncertain terms by the Honourable Apex Court in Delhi Administration Vs. Gurdip Singh Uban and Others, , such petitions filed for

clarification/modification of the order passed in the review application on its disposal on merits, are not at all maintainable, particularly in the

absence of any specific Rule or provision of law permitting filing of such petitions, virtually amounting to filing second review petitions. In this view

of the matter, when the subject on hand has been aptly covered by the above quoted judgments of the Honourable Apex Court, the judgments

cited on the part of the petitioners, regarding the powers of the Court u/s 151 CPC, will not, in any manner, be helpful to their case, since not

applicable to the facts of the case on hand.

10. Now, let us see as to what "modification" the petitioners want to the order passed by us.

11. A reading of the affidavits filed in support of these petitions would show that they have raised many questions, regarding the findings rendered

by us in the Review Application, purely regarding the merits of the case. In their affidavits, the petitioners would submit that when the writ petitions

were allowed by the Division Bench of this Court, it has taken into consideration of the fact that notices were not served on the land owners,

before a declaration was made u/s 6 of the Land Acquisition Act, 1894 and the other legal and factual issues raised by the petitioners in the writ

petitions were not considered by the learned Judges since the writ petitions came to be allowed on the question of issue of notices to the land

owners alone; that the respondents filed the review applications contending that the notices were served on the land owners and that the finding of

the Division Bench was erroneous and this Court reviewed the order passed by the Division Bench on the ground that the writ petitions are filed

after the passing of the award and dismissed the writ petitions on the ground of laches; that this Court, while modifying the orders of the Division

Bench, recorded finding on merits, with regard to the other points raised in the writ petitions, however, they were not given any opportunity to

argue the writ petitions on merits before this Court and they were not heard before disposing the writ petitions (sic.review petitions) on merits; that

the order passed by this Court proceeds on the basis that an award came to be passed on 23.9.1986 by the Land Acquisition Officer, which is

contrary to facts; that the alleged award came to be passed by Land Acquisition Officer on 23.9.1986 was a void one; that under proviso to

Section 11 of the Land Acquisition Act 1894/1984, the competent authority is empowered to give prior approval to pass any award and no award

shall be made without the prior approval of the competent authority and in the instant case, the Commissioner, Land Administration, is the

competent authority to give approval to pass any award and after obtaining prior approval only, the Land Acquisition Officer shall pronounce the

award; that the prior approval contemplated under the Act is a mandatory requirement; that without getting prior approval of the Commissioner,

Land Administration, any award pronounced by the Land Acquisition Officer is a nullity as the Land Acquisition Officer will not get jurisdiction to

pass an award without the prior approval of the competent authority; that they came to know that the land acquisition officer had sent a draft

award for prior approval to the District Revenue Officer on 17.9.1986.

12. It has also been submitted by the petitioners that in respect of the present acquisition, the District Revenue Officer has no competency to grant

prior approval for passing any award and even on facts, the District Revenue Officer did not grant any prior approval before passing the award;

that in fact, the Commissioner, Land Administration also did not grant any prior approval to pass the award and since the Land Acquisition Officer

failed to get prior approval from the competent authority, the award pronounced by him is a nullity and not a valid one in the eye of law; that the

declaration u/s 6 of the Act was made on 20.9.1983 i.e. prior to the amendment to the Land Acquisition Act and as per the amendment to the

Land Acquisition Act, 1894, which came into effect from 24.9.1984 (Act 68/84), an Award shall be made within two years made from the date of

the notification of the amendment in the manner known to law and since the award is not passed till date in the manner known to law, the entire

acquisition proceedings become lapsed in view of the Section 11-A of the Act and in view of the amendment, the Land Acquisition Officer ought

to have passed the award on or before 23.9.1986 and taking into account of this fact, the Land Acquisition Officer in order to bring the entire

proceedings within that stipulated date, made the award as if it was pronounced on 23.9.1986, but without getting the prior approval of the

competent authority and hence the award came to be passed by the Land Acquisition Officer was not valid in the eye of law and as there is no

valid award passed within the stipulated time of two years from the date of amendment, the entire acquisition proceedings shall stand lapsed.

13. Surprisingly, a thorough perusal of the affidavits filed by the petitioners in W.P. Nos. 14235 of 1988 and 4079 of 1989 and the grounds of

appeal raised by them in Writ Appeal Nos. 258 and 1069 of 1994 and the counters filed by them in the Review Application Nos. 68 and 69,

would show that the petitioners have not raised these aspects earlier and now, under the garb of "modification" petitions, they are praying to

review the order passed by us in the Review Petitions, which is impermissible under law, rather deprecated by the Honourable Apex Court in the

above quoted judgments.

14. At this juncture, we feel it apt to quote a Three Judge Bench judgment of the Honourable Apex Court in S. Bagirathi Ammal v. Palani Roman

Catholic Mission 2007 (5) CTC 881, wherein the Honourable Apex Court has held:

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 appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing 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 at right by reviewing the order.

15. In Inderchand Jain (D) Through L.Rs. v. Motilal (D) Through L.Rs. 2009 (6) Supreme 23, the Honourable Apex Court has held that Review

is not appeal in disguise.

16. When the law on the point of review itself is to the effect that it cannot be an appeal in disguise and under the guise of review, the parties are

not entitled for re-hearing of the same issue, these petitions filed to ''modify'' the order passed by us in the review petitions, raking up new pleas,

which were never pleaded and argued either before the learned single Judge or before the Division Bench while hearing the writ appeals or before

us when hearing the Review Applications, and virtually praying to declare the award already passed in the matter as null and void, cannot at all be

entertained. In this view of the matter, we need not have to go into such new pleas urged by the petitioners in these non-maintainable petitions filed

as a second review petitions, under the garb of petitions to ''modify'' the order passed by us in the review petitions.

17. Even otherwise, on a thorough perusal of the entire materials placed on record and further perusing the records placed before him by the

authorities, the learned single Judge has recorded a factual finding that the Award has already been passed, which we affirmed in the review

petitions, on assessment of the entire facts and circumstances of the case, since a well considered and merited order of the learned single Judge has

been toppled by the First Bench of this Court in the Writ Appeals, committing an error by holding that it is not a fit case where appropriate relief

can be declined to the petitioners solely on the ground of laches.

18. Delay defeats equity. In this case, the inordinate and unexplained delay of 6-7 years in filing the writ petitions, challenging the Section 4(1)

notification dated 13.8.1982 has never been explained by the petitioners, much less satisfactorily.

19. Coming to the plea of the petitioners that the order in the review applications has been passed without giving any opportunity of hearing for

them, it is to be mentioned that the learned senior counsel Mr. R. Thiagarajan appearing for Mr. V. Gangadharan, appearing for some of the

petitioners herein, championing the cause of all other petitioners, has advanced lengthy arguments and in due consideration of all such arguments

and the materials placed on record we have passed the common order dated 4.10.2007. Notably, the same counsel are also appearing in these

petitions for the petitioners. Therefore, it is not a matter where order came to be passed without hearing the petitioners, as has been tried to be

branded on the part of the petitioners and thus this plea urged on the part of the petitioners is rejected being false.

20. Coming to the plea raised on the part of the petitioners that the respondents herein have obtained orders in the review applications by playing

fraud on this Court, we are not in a position to accept the same, in view of the fact that only after properly considering all the facts and

circumstances of the case, we have passed orders in the review applications. At this juncture, we have no hesitation to hold that this plea has been

raised by the petitioners under desperation.

For all the above reasons and discussions, no modification or clarification is required to the order passed by us in the review applications and both

these Miscellaneous petitions filed by the petitioners are, accordingly, dismissed.