

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.11.2016

Date of Verdict : 02.12.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.21048 of 2010

and M.P.No. 1 of 2010

S.Anand ...Petitioner

Vs.

1. The Secretary,
Housing and Urban Development Department
Fort. St. George,
Chennai - 600 015.
2. The Director,
Town Planning,
No.807, Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
Coimbatore Local Planning Authority,
Corporation Shopping Complex,
Raju Naidu Street, Tatabad,
Sivananda Colony,
Coimbatore - 641 012.
4. The Commissioner,
Coimbatore Corporation,
Town Hall,
Coimbatore - 641 001.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to declare that the petitioner's land comprised in Survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore, is deemed to be released from the reservation of petitioner's land for formation of Public road as per the provision of Section 38 of Town and Country Planning Act and consequently direct the respondent to pass an appropriate order or release of petitioner's land comprised in Survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore.

For Petitioner : Mr.V.R.Kamalanathan
For Respondents: Mr.V.Jaya Prakash Narayanan
1 to 3 Special Government Pleader for

For 4th Respondent: Mr.Sivakumar.

O R D E R

The prayer in this writ petition is to direct the respondents to declare that the petitioner's land comprised in Survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore, is deemed to be released from the reservation of Section 38 of Town and Country Planning Act and consequently direct the respondent to pass an appropriate orders for release of petitioner's land comprised in Survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore.

2. The short facts leading to the filing of this case are as follows :

The petitioner is the absolute owner of the property comprised in Survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore. During the year 1990, a Town Planning Scheme was prepared for Coimbatore Urban area and the town planning authorities have ear-marked a portion of the petitioner's land comprised in Survey Nos. 509, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore for formation of 80 feet AA proposed Scheme road and another 60 feet BB proposed scheme road comprising of Survey Nos. 509, 510 and 511/1.

3. In view of the said scheme prepared in the year 1990, it was stated that the said land would be acquired by the respondent as provided under the provision of Chapter IV of Town and Country Planning Act 1971 (herein after referred to as Act). However, the Government had not taken any steps to acquire the land. It is also informed to the petitioner that the proposal to form the road has not been given effect to or implemented. It was also informed that under Section 25 of the Act, the town planning authority should have obtained approval from the Government within three years from the date of the publication of the scheme but they have not done so. Therefore, the Government after having prepared the master plan for Coimbatore local planning area and issued the same in the Gazette notification in G.O.Ms.No.661, Housing and Urban Development (UDIV) Department, dated 12.10.1994 has not done anything. In the said G.O.Ms.No.661, the following orders are passed:

"In the G.O.Ms.No.963, Housing and Urban Development Department, dated the 14th July, 1987, the Government have given their consent to the Coimbatore Local planning Authority to the publication of a notice of the preparation of the master plan for Coimbatore Local Planning Area.

2.Under Section 28 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972), the Governor of Tamil Nadu hereby approves the Master Plan for Coimbatore Local Planning area submitted by the Director Town and Country Planning. The Government permit the delay of 1189 days in the preparation of the Master plan and convening a meeting of the local planning authority. Copies of the Master Plan for Coimbatore Local planning area as approved by the Government are communicated to the Director of Town and Country Planning.

3.The following Notification will be published in the next issue of the Tamil Nadu Government Gazette:-

NOTIFICATION

In exercise of the powers conferred by sub-section (1) of Section 30 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972), the Governor of Tamil Nadu 28 of the said Act for the Master Plan of Coimbatore Local Planning area submitted by the Director of Town and Country Planning.

2.The Master Plan for Coimbatore Local Planning Area with all its enclosures shall be kept open to the inspection of the publish in the Office of the Member-Secretary, Coimbatore Local Planning Authority, Coimbatore Corporation Compound, Coimbatore-1, during office hours."

4. Though such a notification was issued under Section 30 of the Act, no follow-up action of acquisition has been taken. Therefore, the petitioner had made representation several times to the respondents to release the lands belonging to him as the same is not acquired. It is also stated in the representation that since no more public purpose is involved under the deemed provision viz under Section 38 of the Act, land would be deemed to be released from reservation, allotment or

designation. Such representation made by the petitioner have not received any result, therefore the petitioner had approached this Court by filing the present petition with the aforesaid prayer.

5. This Court, on the admission stage, after hearing the parties concerned, has passed the following interim order in M.P.No.1 of 2010 in W.P.No.21048 of 2010:

"5. The Court has considered the rival submissions made by the learned counsel on either side.

6. Since no declaration as provided under Section 37(2) of the Town and Country Planning Act, 1971 has been published in respect of the above said lands, which were reserved for public purpose for formation of road within three years from the date of publication of notice in the Tamil Nadu Government Gazette under Section 26 or under Section 27 and in view of the apprehension of the petitioner that his possession is disturbed by the respondents, this Court is of the view that prima facie case has been made out in favour of the petitioner. Unless the respondents are restrained by way of interim injunction the petitioner would be put to irreparable loss and hardship. Hence, there will be an order of interim injunction as prayed for, until further orders."

6. Heard both sides.

7. The learned counsel for the petitioner would contend that the issue raised in the writ petition is no longer res integra as the same has been considered in number of cases by this Court and orders have been passed, wherein by invoking Section 38 of the said Act, the land, which were originally earmarked for the public purpose under the scheme of the said Act, as approved by the Government under Section 28 and notified under Section 30 of the Act, shall be deemed to be re-conveyed, provided the same is not acquired within the statutory period of three years as described in proviso to Section 37(2) of the Act. In view of the said categorical findings given by this Court in series of cases, the prayer sought for in the present writ petition is to be allowed. In this regard the learned counsel for the petitioner relied upon the following decisions of this Court:

Sl.No	Citation	Case Details
1.	2008 (2) MLJ 184	K.S.Kamakshi Chetty & Others Vs. Commissioner, Aruppukottai Municipality & another
2.	2008 (8) MLJ 994	Sams Axis City Promoters (P) Ltd. Vs. Member Secretary, Trichirappalli & others
3.	W.P (MD) 5221/09	V.Nagamani & Another Vs. The Director of Town and Country Planning, Chennai and Others
4.	W.A.No.1773/09	The Commissioner Aruppukottai Municipality Vs. K.S.Kamakshi Chetty & Others
5.	W.P.No.14389/10	A.Rajam & Others Vs. The Member Secretary, Coimbatore Local Planning, Authority & Others
6.	W.P.No.16918/13	K.Balasubramanian Vs. The State of Tamil Nadu and others
7.	W.P.No.136/15	Sparejon Samuel Vs. The Director of Town and Country Plannning, Chennai & another.

8. On the other hand, the learned Special Government Pleader appearing for the respondents would contend that even though there was no acquisition proceedings initiated pursuant to the issuance of the scheme as well as the notification, so far as the Coimbatore region is concerned a master plan was effected as per the G.O.Ms.No.661, Housing and Urban Development (UDIV) Department dated 12.10.1994, thereafter the question of implementing the detailed development plan as notified in the year 1964 does not arise. Therefore the contention of the petitioner, as projected in this case, is liable to be rejected. The learned Special Government Pleader would also content that in view of the judgment made in the W.A.Nos. 156 of 2000 and 45 of 2003 passed by the Division Bench of this Court, once the area is ear-marked for the public purpose, it cannot be altered or the same shall not be put into any other use other than ear-marked and therefore the plea raised by the petitioner herein is not acceptable and the prayer sought for in the writ petition is liable to be rejected.

9. The learned Standing counsel appearing for the fourth respondent also submitted that even though the master plan was prepared and published and the area which belong to the petitioner also had been ear-marked and the same has not been so far acquired under the land acquisition proceedings and that by

itself will not confer an absolute right on the part of the petitioner to seek for re-conveyance. He would also submit that if the lands were not utilized the same may be required for any other purpose, therefore Section 38 of the Act cannot be invoked in this case.

10. This Court have considered the rival submissions submitted by the respective counsel as well as the documents and the citation produced by the learned counsel for the respective parties.

11. Admittedly, the lands which are in question belongs to the petitioner. There is no dispute about it. The said land had been ear-marked for the public purpose under the 1990 Coimbatore Urban area planning scheme prepared by the respondents. Subsequently, under Sections 28 as well as 30 of the Act, the first respondent issued a Government Order in G.O.Ms.No.661, Housing and Urban Development (UDIV) Department, dated 12.10.1994, whereby the msater plan for Coimbatore local planning area submitted by the Director of Town and Country Planning ie., second respondent, since having been approved by the Governor under Section 28 of the Act the same is notified under Section 30(1) of the said Act.

12. In this regard, the scheme of the Act whereby this issue have to be dealt with can be looked into. Under Sections 26 and 27 of the Act, notice of the preparation of the regional plan, the master plan or the new town development plan as well as the detailed development plan is to be issued. Thereafter, after considering the objection, the ultimate plan shall be approved by the Government under Section 28 of the Act. Thereafter the approved master plan or the new town development plan, under Section 28 of the Act, shall be published by the Government by notification in the Tamil Nadu Government Gazettee and in leading newspapers under Section 30(1) of the Act. In this regard Section 28 and 30 of the Act are re-produced here under.

"28. Approval by Government - As soon as may be, after the submission of the regional plan, the master plan or the new town development plan but, not latter than such time as may be prescribed, the Government may, after consulting the Director, either approve the said plan or may approve it with such modifications, as they may consider necessary, or may return the said plan to the appropriate planning authority to modify the plan or to prepare a fresh plan in accordance with such directions as the Government may issue in this behalf and

resubmit it to the Government for approval.

.....

30. Coming into operation of regional plan, master plan and new town development plan - (1) The approval of the Government to a regional plan, a master plan or a new town development plan under Section 28 shall be published by the Government by a notification in the Tamil Nadu Government Gazettee and in leading daily newspapers of the region and such notification shall state the place and time at which the said plan shall be open to the inspection of the public."

13. Once the approval is made and the notification is issued under Sections 28 and 30 respectively, then such land ear-marked or reserved or designated shall be deemed to be land notified for public purpose within the meaning of Land Acquisition Act and the same can be acquired under the said Act as provided under Section 37 of the Act. Thereafter once such a land is reserved or allotted or designated having approval the Government has every power to modify the said development plan. In this regard Section 37(2) is very relevant for the purpose of the case :

"Section 37: (2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

Provided that no such declaration in respect of any particular land covered by a notice under Section 26 or Section 27 shall be made after the expiry of three years from the date of such notice."

14. From the above proviso, it is clear that under the scheme, an initially notification is given for the preparation of regional plan, master plan, new town development plan as well as detailed development plan under Sections 26 and 28 of the

Act. After considering the objections, if any, the same shall be approved by the Government under Section 28 of the Act and thereafter such approval shall be notified under Section 30 of the Act. Once it is notified then the Government have got every power to acquire under Section 37 of the Act. But such acquisition within the meaning of Section 37(2) shall be made by way of declaration, which is deemed to be declared under Section 6 of the Land Acquisition Act, 1894, in respect of the said land within a period of three years from the date of such notice.

15. Here, in the case on hand, originally the Government under the G.O.Ms.No.903, L.A. dated 16.04.1964, published and submitted for the sanction of the Government requiring the Uppilipalayam Panchayat to prepare, publish and submit, for the sanction of the Government, a draft Planning Scheme in respect of the area covered by the boundaries specified thereunder. This Government order was issued in exercise of the powers conferred by Section 12 of Madras Town Planning Act, 1920 (Madras Act VII of the Governor of Madras). In the said G.O.Ms.No.903, various lands of that village have been ear-marked wherein under the heading Town Planning Scheme No.11, survey Nos. 491 to 537 had also been ear-marked which includes the petitioner's land.

16. Thereafter, nothing had happened and ultimately by G.O.Ms.No.661, dated 12.10.1994, master plan for Coimbatore local planning area was approved under Section 28 of the Act and the same have also been notified under Section 30(1) of the Act. The said G.O.Ms.No.661 was issued on 12.10.1994. Assuming that it was notified on 12.10.1994, the said three years period, as contemplated under Section 37(2) proviso of the Act, was over by 11th October, 1997. Further, no such attempt is made by the respondents under Section 37 of the Act to acquire the land. Therefore, the petitioner contended that in view of the absence of land acquisition proceedings and when the land is not acquired within the period or even beyond the period, Section 38 of the Act, can very well be pressed into service. In this regard for better appreciation, Section 38 of the Act is produced hereunder:

"38. Release of land - If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Section 26 or Section 27 -

(a) no declaration as provided in sub-section (2) of Section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

17. In so far as the said proposition is concerned, that is the three years period since was over and if it is construed in favour of the petitioner then the question is as to whether Section 38 can be pressed into service to release the lands of the petitioner by a declaration or not. Whether the said lands are no more required or deemed to be released, can be decided by applying the principles laid down by this Court in series of Judgments as cited by the learned counsel for the petitioner. In the first Judgment, cited supra, reported in 2008 (2) MLJ 184, (K.S.Kamakshi Chetty & Others Vs. Commissioner, Aruppukottai Municipality & another) the learned Judge, after considering the aforesaid provision of the above said Act, has ultimately taken the decision in the following lines:-

"9. On the facts and circumstances of the present case, the petitioners have clearly stated in the affidavit that even under the old Act VII of 1920, no steps were taken for the purpose of completing the acquisition within three years and the same has not been denied in the counter affidavit filed by the first respondent. Even assuming that the said scheme has been taken over under the Act 35 of 1972, even from the date of coming into effect of the Act within the period stipulated under Section 38, no steps have been taken by the respondents for acquiring the property for the purpose of "open space" stated to have been reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai Sanctioned under G.O.Ms.No.474 LA dated 02.03.1969.

10. This has been the consistent view taken by this Court in various cases also. In W.P.No. 5360 of 2000 (SV.P.N.S.S.Sivaramalingam Vs. Commissioner, Virudhunagar Municipality and Another) K.P.SIVASUBRAMANIAM, J. by order dated 20.02.2011, while dealing with detailed development plan under Act 35 of 1972 has held that after publishing the said plan on 23.05.1984, the property ear-marked for the purpose has not been utilised in terms of Notification and no steps have been taken by the authority to acquire the property and therefore, as per Section 38 of the Tamil

Nadu Town and Country Planning Act, 1971, the property is deemed to be released from such reservation, allotment or designation. The same view was subsequently followed by P.D.DINAKARAN, J. in W.P.No. 12105 of 2003 (R.Jeyapal V. Sattur Municipality rep. By its Commissioner, Sattur and Another) in the order dated 03.03.2004

In view of the above said factual situation, the writ petition stands allowed and the impugned order of the first respondent is set aside. No costs."

18. Thereafter, in the subsequent judgment reported in 2008(8) MLJ 994 (Sams Axis City Promoters (P) Ltd. Vs. Member Secretary, Trichirappalli & others), the Judgment made in WA. 156 of 2000 and 45 of 2003 as has been relied upon by the respondent, has been considered and ultimately this Court has given the following findings:

"26. Considering Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 which deems the release of property in the event of not acquiring within the stipulated time of three years as per proviso to Section 37(2), based on the overall scheme and object of the Act and also on the factual circumstances, when the authority, viz., the Trichy Corporation has categorically decided that due to want of funds, there is no proposal to acquire the same, there is no difficulty to come to the conclusion that the deemed provision comes into effect automatically.

.....
29. In view of the above said legal position applied on the facts of the present case and in the light of the provisions of the Tamil Nadu Town and Country Planning Act, 1971, the impugned order of the first respondent dated 25.01.2008 is set aside and consequently, by application of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, it is declared that the respondents are not entitled to treat the survey Nos.126/6, 125/2 and 125/1B in Varaganeri village as ear-marked for public purpose under the Varaganeri South Development Scheme and the writ petition stands allowed. No costs. Connected miscellaneous petitions are closed."

19. Thereafter, in W.P.(MD).No.5221 of 2009 cited supra this Court after following the aforesaid two judgements ie., 2008(2) MLJ 184, and 2008(8) MLJ 994 has given its findings which reads as follows :

"Therefore, having regard to the fact that no steps have been taken by the respondents as provided in that Act, either to acquire the land or make publication within three years from the date of initial notification. As per the deeming provision of Section 38, the lands are deemed to have been released from the acquisition and hence, the respondent cannot reject the approval on the ground that the land has been included in the 100 Feet AA Road Scheme."

20. Thereafter, the Division Bench of this Court in W.A.No. 1773 of 2009, dated 25.08.2011 as cited above, having considered these aspects, has decided as follows :

"18. As far as the present case is concerned, it is candidly clear that no steps were taken for completing the acquisition within three years period, which was not denied in the counter affidavit filed by the appellant/first respondent -Municipality in the writ petition. Even assuming that the said scheme was taken over under the Act 35 of 1972, even from the date of coming into effect of the Act within the period stipulated under Section 38, no steps were taken by the respondents therein for acquiring the property for the purpose of "open space" purported to be reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai Sanctioned under G.O.Ms.No.474 LA dated 02.03.1969.

19. Looking at from any angle, we are of the considered view that the property ear-marked for the purpose was not utilised as per the Notification and no steps admittedly were taken by the Authority to acquire the property and therefore, as per Section 38 of the Act 35 of 1972, the property was deemed to be released from such reservation, allotment or designation."

21. Thereafter, in yet another judgement in W.P.No.14389 of 2010 dated 28.07.2010, this Court having considered the very same Government Order in G.O.Ms.No.661 dated 12.10.1994 has taken the following decision :-

"The petitioner have come up with

the present writ petitioner for a declaration, declaring the action of the respondents, under Section 26 of the Town and Country Planning Act by reserving the petitioner's property situated in S.F.No.446 in Komarapalayam Village, Coimbatore measuring an extent of 2 Acres and 88 cents for School and play ground as illegal and unconstitutional and direct the respondents to release the said property under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

..... as far as the Coimbatore region is concerned, Master Plan was effected as per the Government G.O.Ms.No.661 dated 12.10.1994. Therefore, the question of implementing the detailed development plan as notified in the year 1979 does not arise, Further the Division Bench of this Court has held that the area ear-marked shall not be altered or the same shall be put into use as per the ear-marked purpose. Thus, the counter affidavit see for the dismissal of the writ petition.

6. In view of the above stated position and in view of the Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 the petitioner have to succeed in the writ petition and they are entitled for the relief sought for by them.

7. In fine, the writ petition stands allowed. Consequently, connected miscellaneous petition is closed. However, no orders as to costs."

22. The same view has also been taken in yet another judgment in W.P.No.16918 of 2013 dated 19.09.2016 as cited supra.

23. In view of the plethora of decisions of this Court as has been quoted above, the law is well settled in this regard as the issue raised in the writ petition is no more res integra. Once the three years period is lost within the meaning of Section 37(2) proviso thereafter, Section 38 can very well be pressed in service and ultimately the land is deemed to be released from such reservation, allotment or designation. Therefore, in view of the legal provisions as well as the categorical decisions made by this Court, this Court has no hesitation to hold that the petitioner's land as claimed in this writ petition, shall deemed to be released from such reservation

or allotment or designation under Section 38 of the Act and therefore, the petitioner will succeed in the writ petition.

24. Resultantly, the writ petition is allowed and consequently the respondents are directed to pass appropriate orders releasing the petitioner's land comprised in survey Nos. 509, 510, 511/1, 514, 515, 520, 521 and 522 at No.28, Uppilipalayam Village, Coimbatore South Taluk, Coimbatore within a period of four weeks from the date of receipt of a copy of this Order. There shall be no orders as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Secretary,
Housing and Urban Development Department
Fort. St. George, Chennai - 600 015.
2. The Director,
Town Planning, No.807, Anna Salai,
Chennai - 600 002.
3. The Member Secretary,
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4. The Commissioner,
Coimbatore Corporation,
Town Hall, Coimbatore - 641 001.

+1 cc to Mr.V.R.Kamalanathan,advocate,sr.71119.

rv(co)

krd 7/12

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and M.P.No. 1 of 2010

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