



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

W.P. (MD) No.11444 of 2016

and

W.M.P. (MD) .No.8754 of 2016

1. Shahul Hameed
2. Wahitha
3. A.Raiz Ahamed
4. Kasim

... Petitioners

Vs.

1. The Director of Town and Country Planning,
Chennai.
2. The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Anna Maligai, 3rd Floor,
Madurai-2.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of declaration to declare the reservation made in respect of the petitioners' land in Survey Nos.1/2, 1/3, 1/4, 1/6, 4/2, 4/3, 4/5BIA, 4/6A1B, Aathikulam Village in S.No.27/21 in Kannanendal Village, Madurai North, Madurai under the Aathikulam Detailed Development Plan Part I, to have lapsed by operation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) in the light of the judgment of this Court in Commissioner, Arupukottai Municipality vs. Kamakshi Shetty (2011 (8) MLJ 437).

For Petitioners : Mr.E.Mareeskumar for
Mr.V.Nirmal Kumar

For Respondents : Mr.K.Guru
Additional Govt. Pleader

O R D E R

Heard both sides.

<https://hcservices.ecourts.gov.in/hcservices/>

2. By consent, the main Writ Petition itself is taken up for final disposal.



3. No counter is filed on behalf of the Respondents.

4. According to the Petitioners, the landed property measuring an extent of 2 acres and 62 cents in Survey Nos.1/2, 1/3, 1/4, 1/6, 4/2, 4/3, 4/5B1A and 4/6A1B in Aathikulam Village and 20 cents in Survey No.27/21 in Kannanendal Village, Madurai North, Madurai belong to them and Patta in respect of the said property though stand in their name, as a matter of fact, they are in possession and enjoyment of the said property till date. When that be the fact situation, they intended to develop the aforesaid property and when they approached the Office of the Second Respondent, they were informed that a part of the property in the said Survey Numbers was reserved for scheme road and other purposes under the Aathikulam Detailed Development Plan Part I.

5. The stand of the Petitioners is that, on enquiry, it was found that the Aathikulam Detailed Development Plan Part I was resolved to be prepared by the Second Respondent in Resolution No.153/97 dated 07.03.1997 and the same was published in the District Gazette, as per Section 19 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1972). Further, during the year 1999, the Detailed Development Plan was approved by the First Respondent/Director of Town and Country Planning, Chennai, by his proceedings in ROC.No.36563/97 DP2 dated 24.08.1999 and indeed, the Detailed Development Plan was also published in the Tamil Nadu Gazette under Section 31 of the Act, 1971.

6. At this stage, the Learned Counsel for the Petitioners contends that in the aforesaid Detailed Development Plan, although the lands belonging to the petitioners mentioned in Survey Numbers were subjected to certain reservation, the said lands till date have not been acquired and the lands stand in their name. In this connection, the Learned Counsel for the Petitioners place reliance on Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 and projects an argument that if the planning authority had reserved any land at the disposal of any private person to be required for any purpose under a Detailed Development Plan in respect of which notice under Section 26 or 27 was issued, the same can be acquired by the State Government by invoking the ingredients of the Land Acquisition Act, 1894.

7. The Learned Counsel for the Petitioners brings it to the notice of this Court that Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 specifies that no such acquisition can be effected after the expiry of 3 years from the date of issuance of notice under Section 26 or 27 in respect of such lands.

8. Furthermore, it is represented on behalf of the Petitioners that if no such acquisition as mentioned under Section 37(2) of the Tamil Nadu Town and Country Planning Act, 1971 is effected in respect of any land reserved for any purpose specified



in the Detailed Development Plan covered by a notice under Section 27, the land shall be deemed to have been released from such reservation allotment or designation.

9. The real grievance of the Petitioners is that the Aathikulam Detailed Development Plan Part I was notified under Section 27 of the Tamil Nadu Town and Country Planning Act and approved under Section 29 of the Act as early as on 1999 and in fact, the State Government has not taken any steps to effect any acquisition as mentioned under Section 37 of the Act, till date. Therefore, it is the version of the Petitioners that on the expiry of 3 years (with effect from 2003) the land is deemed to have been released from any reservation made under the Detailed Development Plan by operation of Section 38 of the Town and Country Planning Act, 1971.

10. In reality, the Second Respondent/Member Secretary Madurai Local Planning Authority, Madurai, by means of proceedings dated 28.10.2013, addressed to the First Respondent/Director of Town and Country Planning, Chennai had requested for annulling the detailed development plan. However, till date, there is no action in this regard.

11. At this juncture, the Learned Counsel for the Petitioners cites the Division Bench judgment of this Court in W.A.No.1773 of 2009 (Commissioner, Aruppukottai Municipality, Aruppukottai, Virudhunagar District v. K.S.Kamakshi Chetty and others) reported in 2011 (8) MLJ 437 (where JUSTICE M.VENUGOPAL is a party), whereby and whereunder, at paragraphs 16 to 19, it is observed as under:

"16. We recall the decision of this Court the case of K.S.Kamakshi Chetty v. Commissioner, Aruppukottai Municipality (2008) 2 MLJ 184, wherein it is held as follows (ratio decidendi of MLJ):

"When there was no acquisition proceeding taken within three years after the Notification issued under Section 14(3) of the old Act 7 of 1920 and even after the new Act of 1971 has come into effect, no step has been taken within the stipulated period for acquiring the property for the purpose of "open space" stated to have been reserved under the said Scheme, in view of Section 38 of the Act of 1971, the property would be deemed to be released from such reservation."

17. We also pertinently point out the decision of this Court the case of Casa Granade Private Limited v. Chennai Metropolitan Development Authority (CMDA) (2007) 3 MLJ 647, wherein it is held as follows (ratio decidendi of MLJ):



"I. While granting planning permission, the concerned Authority may impose certain conditions, however, any condition imposed shall be in compliance of relevant Act or Rules and in the absence of power, such condition cannot be imposed by the Authority in exercise of its executive power."

"II, The State can prepare development plan covering the private lands, but no development can be made on that land unless the private land is acquired for development, even for providing amenities to the residents of the area."

"III. The rule of alternative remedy cannot be said to be of universal application and High Court under Article 226 of Constitution, can exercise its inherent powers in cases where the authorities passed the order in the absence or excess of jurisdiction."

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 2.3.1969.

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. "

12. Also, the Learned Counsel for the Petitioners relies on the decision of Honourable Supreme Court between Balakrishna H.Sawant v. Sangli, Miraj & Kupwad City Municipal Corporation and others reported in 2005(3)SCC 61 at special page 62, wherein at paragraphs 4 and 5, it is observed as follows:

"4. Under the Maharashtra Regional and Town Planning Act, 1966 a modification of the final development plan of minor nature can be made by the planning authority. It also enables the State Government to direct the planning authority to make such modification, and on



failure of the planning authority to carry out the direction, the State Government may itself notify the proposed modification inviting objections. It was, therefore, submitted before us that the procedural requirements of the Act are such that they are bound to take time.

5. Counsel for the Corporation states that the resolution of 20-7.2002 stands and the respondent Corporation is bound by it and holds itself bound even today, meaning thereby, that the land shown as reserved in the development plan is not required by the Municipal Corporation as it does not have the resources to develop the said land and construct a high school and playground over it. The stand of the State Government even before the High Court was that the reservation had lapsed. It is, therefore, apparent that the reservation will serve no purpose except to cause harassment to the appellant without any corresponding benefit to the respondent Corporation. Ultimately, the respondent Corporation may not take any steps to get the land acquired, and in that event, by efflux of time the reservation may again lapse."

13. Admittedly, in the instant case on hand, no steps have been taken to acquire the subject matter of lands in furtherance of the reservation. As such, it is candidly quite clear that the purpose for which the lands were not acquired in furtherance of the reservation made, as per Section 38 of the Town and Country Planning Act, the properties were deemed to be released from such reservation, allotment or designation, as the case may be, looking at from that angle, the Writ Petition succeeds.

14. In the result, the Writ Petition is allowed leaving the parties to bear their own costs. Resultantly, the petitioners' lands in Survey Nos.1/2, 1/3, 1/4, 1/6, 4/2, 4/3, 4/5B1A and 4/6A1B in Aathikulam Village and Survey No.27/21 in Kannanendal Village, Madurai North, Madurai under the Athikulam Detailed Development Plan Part I are deemed to have been released from the reservation, by operation of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS)



To

1. The Director of Town and Country Planning, Chennai.

2. The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Anna Maligai, 3rd Floor,
Madurai-2.

+1cc to Mr.V.Nirmal Kumar, Advocate, Sr.No.34980

+1cc to the Special Government Pleader, Sr.No.34904

akv

JM/NGM-MP/SAR-II/15.07.2016/6P-5C

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