



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P(MD)Nos.14456 and 14600 of 2014

W.P(MD)No.14456 of 2014

Muthu Velayutham @ R.Kannan

...Petitioner

vs.

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

2.Member,
Secretary (General),
Local Planning Authority,
Anna Building, Alagar Koil Road,
Tallakulam, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus directing the Respondents to release the petitioner's land bearing Survey Numbers 67/3 pt; 67/7B pt; 67/9pt; 67/10pt; with an extent of 2 Acres 80 Cents situate in Kochadai Village (New Ward No.22) Madurai South Taluk, Madurai District treating the "Kochadai Detailed Development Plan No.7" of Madurai Local Planning Area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act 1971 (Act 35 of 1972).

For Petitioner	: Mr.R.Karunanidhi
For Respondents	: Mr.T.S.Mohammed Mohideen Additional Govt. Pleader

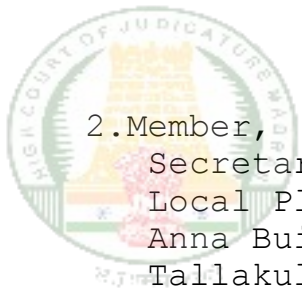
W.P(MD)No.14600 of 2014

1.Muthu Velayutham @ R.Kannan
2.Sundaravalli
3.Muthulakshmi
4.Meenakumari

.. Petitioners

Vs.

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



2.Member,
Secretary (General),
Local Planning Authority,
Anna Building, Alagar Koil Road,
Tallakulam, Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus directing the respondents to release the petitioner's land with an extent of 2 acres 65 cents bearing Survey No. 82/3 82/4 82/5 situate in Kochadai Village (New Ward No.22) Madurai South Taluk, Madurai District treating the "Kochadai Detailed Development Plan No. 2&3" of Madurai Local Planning Area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act 1971 (Act 35 of 1972).

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.T.S.Mohammed Mohideen
Additional Govt. Pleader

COMMON ORDER

In both the writ petitions, the petitioners are seeking for release of their respective land by treating the "Kochadai Detailed Development Plan Nos.2, 3 and 7" of Madurai Local Planning Area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act 1971.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Government Pleader appearing for the respondents.

3.As early as on 03.03.2002, "Kochadai Detailed Development Plan Nos.2 and 7 were prepared by the respondents by including the land belonging to the petitioners' herein. The said development plan was published in the Tamil Nadu Government Gazette on 19.10.2005. Even though the plan was prepared and published in the Government Gazette as stated supra, the fact remains that the petitioners' land was not acquired by initiating further proceedings in accordance with law. The petitioners made representation in the month of August 2014 for release of their land from the development plan. Since their request was not considered, they filed the present these writ petitions seeking for the relief as stated supra.

4.The learned counsel appearing for the petitioners submitted that once the authority failed to acquire the land within three years from the date of publication of the notification of the development plan, the entire proceedings shall have to be treated as lapsed and to that effect this Court has passed an order reported in 2017(1) CTC 175 (S.Anand vs. The Secretary, Housing and Urban Development and others).



5.The second respondent filed a counter affidavit and also additional counter affidavit. It is specifically stated by the respondents in their counter affidavits that the land was not acquired so far.

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6.Mr.T.S.Mohammed Mohideen, learned Additional Government Pleader appearing for the respondents fairly submitted that the order passed by this Court reported in 2017(1) CTC 175 (S.Anand vs. The Secretary, Housing and Urban Development and others) is applicable to the facts and circumstances of the case, since it is admitted by the second respondent in the counter affidavit that they have not taken the land by way of acquisition.

7.In the above said decision, after following the Division Bench decision of this Court and other decisions, it has been observed at paragraph 23 as follows:-

"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."

8.Considering the above-stated facts and circumstances and considering the fact that the issue involved in this case is squarely covered by the above decision of this Court, both the writ petitions are allowed and the respondents are directed to release the land belonging to the petitioners from the "Kochadai Detailed Development Plan Nos.2, 3 and 7". No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar



To,

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

2. Member,

Secretary (General),
Local Planning Authority,
Anna Building, Alagar Koil Road,
Tallakulam, Madurai.

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.11183

+2cc to M/s. R.KARUNANIDHI Advocate in SR. No.10905,10904

+1cc to SPECIAL GOVERNMENT PLEADER in SR. No.11182

SKN

JS/BS/10.03.2017/4P-7C

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