



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**
W.P (MD) No.7301 of 2014

and
M.P (MD) Nos.1 and 2 of 2014

A.Thangaraj .. Petitioner

Vs.

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

2.The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Annamaligai, 3rd Floor,
Madurai - 625 002.

3.The Commissioner,
Madurai Corporation,
Madurai.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the second respondent in his proceedings in Ma.Thil/M2/36971/13 dated Nil.01.2014 and quash the same as illegal and consequentially to direct the respondents to approve the plan submitted by the petitioner for construction of a house in the land in S.No.15/2, D.No.12, 20th Street, Alameen Nagar, Madurai Corporation by treating the reservation of the above said land for park under Parethikulam Extension Scheme as lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act 1971 (TN Act 35 of 1974).

For Petitioner : Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates.

For Respondents 1 and 2 : Mr.J.Gunaseelan Muthaiah,
Government Advocate.

For Respondent No.3 : Mr.R.Murali

ORDER

This writ petition has been filed seeking a Writ of Certiorarified Mandamus to quash the impugned proceedings in Ma.Thil/M2/36971/13 dated Nil.01.2014 passed by the second respondent and also to direct the respondents to approve the plan



submitted by the petitioner for construction of a house in the land in S.No.15/2, Door No.12, 20th Street, Alameen Nagar, Madurai Corporation.

2.The case of the petitioner is that the petitioner purchased a land in Survey No.15/2, Door No.12, 20th Street, Alameen Nagar, Madurai from one Sumathi. In order to construct a house, he submitted a plan to the concerned authority for approval, along with necessary fee. But, the second respondent rejected the said plan on the ground that the said land has been reserved for public purpose under Perathikulam Extension Scheme, by way of passing the impugned order. According to the petitioner, the said scheme was notified in the year 2002 and the State Government has not taken any steps to acquire lands till now and on expiry of three years, i.e., with effect from 2005, as per Section 37 of the Tamil Nadu Town and Country Planning Act, the land of the petitioner is deemed to have been released from such reservation. Under the said circumstances, the present writ petition has been filed for getting the relief sought for therein.

3.The learned counsel for the petitioner would submit that as per Section 37 of the Tamil Nadu Town and Country Planning Act, the said land is deemed to have been released from any reservation made under the scheme and therefore the impugned order passed by the second respondent is liable to be quashed.

4.The learned counsel appearing for the third respondent would submit that approval could not be given, as the said land is reserved for constructing a park under the scheme.

5.I have carefully considered the rival submissions and perused the materials available on record.

6.The issue raised in this writ petition is covered by the Judgment of the Hon'ble Apex Court in **Raju S.Jethmalani and Others v. State of Maharashtra and Others** reported in **(2005)11 Supreme Court Cases 222**, wherein, the Hon'ble Apex Court made it so clear that once the authority fails to acquire the land, the right of the appellant cannot be deprived of the use of the land for residential purpose. Since the issues are one and the same, following the said Judgment of the Hon'ble Apex Court, the impugned order is liable to be quashed and accordingly, the impugned order in MaThil/M2/36971/13, dated Nil.01.2014 passed by the second respondent is quashed and the writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)



To

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

WEB COPY

2.The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Annamaligai, 3rd Floor,
Madurai - 625 002.

+1cc to Mr.R.MURALI Advocate in SR. NO.66469

+1cc to AJMAL ASSOCIATES in SR. No.66304

SMN

JS/SV/SAR.3/31.07.2017/3P-5C

ORDER MADE IN
W.P (MD) No.7301 of 2014
and
M.P (MD) Nos.1 and 2 of 2014
19.07.2017