



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P(MD)No.4753 of 2017

P.Babu

.. Petitioner

Vs

1. The Director,
Town and Country Planning,
No.807, Annasalai,
Chennai 2.

2. The Member Secretary,
Madurai Local Planning Authority,
Corporation office Building,
Anna Maligai, 3rd Floor,
Madurai - 625 002.

.. Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondent Nos.1 and 2 to release the petitioner's land measuring of 8.77 cents situated in old survey No.79/1 and Town Survey No.17/1B in Kochadai Village, New Ward No.22, Madurai West Taluk, Madurai District treating the "Kochadai Detailed Development Plan No.3" of Madurai Local Planning area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act 1971.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.K.Mahesh Raja
Government Advocate.

O R D E R

The Petitioner has approached this Court seeking a direction to the respondents 1 and 2 to release the petitioner's land measuring of 8.77 cents situated in old survey No.79/1 and Town Survey No.17/1B in Kochadai Village, New Ward No.22, Madurai West Taluk, Madurai District treating the "Kochadai Detailed Development Plan No.3" of Madurai Local Planning area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act 1971.

2. According to the petitioner, he is the owner of the land measuring 8.77 cents situated in old Survey No.79/1 and Town Survey No.17/1B situated at Kochadai Village, Madurai West Taluk, Madurai District. According to the petitioner, he purchased the above said



land from a third party by way of registered sale deed vide Registration No.2265 of 2015 and patta has also been issued in his name, after the said purchase. After patta has been issued in his name, the petitioner is paying vacant site tax (VST) to the Madurai Corporation since the Assessment year 2015-2016.

WEB COPY

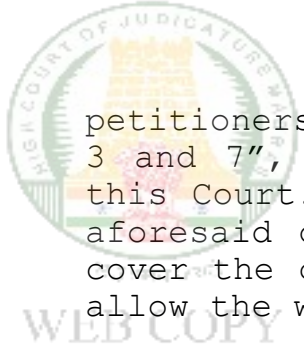
3.While matter stood thus, the respondents had earmarked several properties including the property belonging to the petitioner for "Kochadai Detailed Development Plan No.3". The plan was approved by the 1st respondent vide proceedings in Roc.No.24308/20004/DP2 dated 03.03.2002, in terms of Section 29 of the Tamil Nadu Town and Country Planning Act, 1971 and the plan was also gazetted on 19.10.2005 under Section 31 of the Tamil Nadu Town and Country Planning Act, 1971. Thereafter, no steps have been taken to acquire the land nor any notice was issued to the petitioner for acquisition of the same. According to the petitioner, even after lapse of 11 years, there was no action forthcoming from the respondents for acquiring the lands for the purpose of the "Kochadai Detailed Development Plan No.3" and the land remains in the possession of the petitioner as on date.

4.Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 provides for release of property in favour of its owner in the event of the property not been acquired within a period of 3 years. It is admitted position that in spite of publication of the approval of the "Kochadai Detailed Development Plan No.3" in the official gazette dated 19.10.2005, till date the land has not been acquired and therefore it is deemed to have been released to the owners on expiry of 3 years in the light of Section 38 of said Act. Since the release of the property has not been effected, the petitioner is before this Court seeking issuance of a Writ of Mandamus.

5.Heard, Mr.R.Karunanidhi, the learned counsel for the petitioner and Mr.K.Mahesh Raja, the learned Government Advocate appearing for the respondents.

6.According to the learned counsel for the petitioner, the entire issue raised by the writ petitioner is squarely covered by the order passed by the Division Bench of this Court reported in **(2011) 8 MLJ 437 in the matter of Commissioner, Aruppukottai Municipality v.K.S.Kamakshi Chetty and others**. According to the order passed by the Division Bench, when no steps have been taken for completing the acquisition within 3 years period and when the property earmarked for the purpose has not been utilized as per the notification, the property would be deemed to have released from reservation, allotment or designation as per Section 38 of the Tamil Nadu Town and Country Planning Act 1971.

7.The learned counsel for the petitioner would also relied upon the order passed by this Court in **W.P(MD).No.14456 of 2014 dated 27.02.2017** in which a direction was issued in identical set of facts and circumstances directing to release of the land belonging to the



petitioners therein from "Kochadai Detailed Development Plan Nos.2, 3 and 7", based on the direction issued by the Division Bench of this Court. Since the present writ petition directly covered by the aforesaid decision and the direction issued by this Court squarely cover the claim of the petitioner herein, there is no impediment to allow the writ petition as prayed for.

8. In the circumstances, the Writ Petition is allowed. The respondents are directed to release the petitioner's land measuring of 8.77 cents situated in old Survey No.79/1 and Town Survey No.17/1B in Kochadai Village, New Ward No.22, Madurai West Taluk, Madurai District from "Kochadai Detailed Development Plan No.3" by passing a specific order within a period of two weeks from the date of receipt of copy of this order and communicate the same to the petitioner. There is no order as to costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
Town and Country Planning,
No.807, Annasalai,
Chennai 2.
2. The Member Secretary,
Madurai Local Planning Authority,
Corporation office Building,
Anna Maligai, 3rd Floor,
Madurai 625 002

+ 1 CC TO Mr.R.KARUNANIDHI, ADVOCATE IN SR No. 18358

MSA
TE/JC/SAR-III : 12/04/2017 : 3P/4C

W.P (MD) No.4753 of 2017
28.03.2017