



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. (MD) No. 7105 of 2016

and

M.P. (MD) Nos. 6034 and 6035 of 2016

P.Saravana Kumar

...Petitioner

-Vs-

1.The Director of Town and Country Planning,
807, Anna Salai,
Chennai-2.

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

3.The Commissioner,
Madurai Corporation,
Madurai.

4.The Executive Engineer (Planning),
Madurai Corporation,
Madurai.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings in ~~1052~~ 1052/08070/16, dated 15.03.2016 and quash the same as illegal and consequently to direct the respondents to approve the plan submitted by the petitioner for construction of a house in the land in Plot No.C2, R.S.No. 124/5, 5A, 5B & 5C , C.W.No.24 at 3rd Avenue M.M. Nagar, Thirupalai Village, Madurai Corporation, Madurai.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates

For R-1 & R-2 : Mr.A.Muthukannan
Government Advocate

For R-3 & R-4 : Mr.N.Shanmugha Selvam

ORDER

The petitioner has come up with the present writ petition challenging the order of the 4th respondent, dated 15.03.2016 and consequently to direct the respondents to approve the plan submitted by the petitioner for construction of a house in Plot No.C2, R.S.No.124/5, 5A, 5B & 5C, C.W.No.24 at 3rd Avenue M.M.Nagar, Thirupalai Village, Madurai Corporation, Madurai.

2.The case of the petitioner is that he is the owner of the property in Plot No.C2, R.S.No.124/5, 5A, 5B & 5C, C.W.No.24 at 3rd Avenue M.M.Nagar, Thirupalai Village, Madurai Corporation, Madurai, through a registered gift deed, dated, 05.09.2013 and since then, he has been in possession and enjoyment of the same.

3.The petitioner would state that he decided to construct a dwelling house and for that, he submitted a plan to the 4th respondent seeking approval for construction of a house. The 4th respondent, by the impugned order, dated 15.03.2016 rejected the claim of the petitioner stating that the petitioner's land was reserved for public purpose for the utilization of Thirupalai Detailed Development Plan Part-II, dated Nil.10.2000.

4.The petitioner would claim that the respondents have not initiated proceedings and acquired the land of the petitioner under section 37 of the Act, within a period of three years and therefore, the entire proceedings are deemed to be lapsed.

5.It is contended by the respondents that the petitioner has not raised any objection under section 76 of the Town and Country Planning Act, 1971 after preparation of the plan. Further, the petitioner has not made any representation to the planning authority or the appellate authority regarding the de-reservation of portion of the public purpose. Hence, the writ petition is liable to be dismissed.

6.Mr.H.Mohammed Imran, learned counsel appearing for the petitioner, by placing reliance on the decision of this court reported in 2008(2) MLJ 184 (*K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another*) and CDJ 2017 (MHC) 2551 (*P.Babu vs. The Director, Town & Country Planning, Chennai and another*) would contend that when no steps have been taken for acquiring the lands within a period of three years and when the land was earmarked for the public purpose as per notification, the property would be deemed to have been released from the reservation under Section 38 of the Act.

7.Heard the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the



respondents 3 and 4 and also perused the materials available on record.

8. Sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971 read as follows:-

WEB COPY

"37. Power to purchase or acquire lands specified in the development plan.- (1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

Provided that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under subsection (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.

<https://hcservices.ecourts.gov.in/hcservices/> (3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed



WEB COPY

to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be."

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."

9. A plain reading of sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971 (herein-after called as Act) would reveal that after publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, any land is required, reserved or designated in such plan, acquisition of the land shall be made either under section 36 of the Act or following the procedures under Land Acquisition Act. If the acquisition proceedings are not completed within three years from the date of such notice, the entire proceedings would lapse.

10. In 2008(2) MLJ 184 [K.S. Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another], this court has held that as follows:-

"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



WEB COPY

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 2.3.1969.

10.This has been the consistent view taken by this Court in various cases also. In W.P.No.5630 of 2000 (SV.P.N.S.S.Sivaramalingam v. Commissioner, Virudhunagar Municipality and Another) K.P.SIVASUBRAMANIAM,J, by order, dated 20.2.2001, while dealing with detailed development plan under Act 35 of 1972 has held that after publishing the said plan on 23.5.1984, the property ear-marked for the purpose has not been utilized 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 3.3.2004."

The same view was taken by this court in the subsequent judgment reported in CDJ 2017 MHC 2551.

11.In the case on hand, it is specifically stated by the petitioner that the Local Planning Area, Thirupalai Detailed Development Plan part-II was notified under the Tamil Nadu Town & Country Planning Act, 1971 as early as on 2000, but however, the acquisition proceedings are not completed within the stipulated time of three years. Hence, the reservation made under the detailed development plan lapses by operation of Section 38(2) of the Act. The main contention of the respondents is that steps have been taken to acquire the land by the Executive Authority and the land once earmarked for public purpose, nobody will have any right over the same.

12.In view of the categorical admission made by the respondents that the land in question has not been acquired so far, as per section 38 of the Act, keeping in mind the provisions of the Act and the consistent view taken by this court in the decisions referred supra, I am of the considered opinion that the petitioner is entitled to succeed in this writ petition.



13. In the result, the writ petition is allowed and the impugned order, dated 15.03.2016 passed by the 4th respondent is set aside. The respondents are directed to release the petitioner's land situated in Plot No.C2, R.S.No.124/5, 5A, 5B & 5C, C.W.No.24 at 3rd Avenue M.M.Nagar, Thirupalai Village, Madurai Corporation, Madurai, by passing a specific order within a period of two weeks from the date of receipt of the order copy and communicate the same to the petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

1.The Director of Town and Country Planning,
807, Anna Salai,
Chennai-2.

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

3.The Commissioner,
Madurai Corporation,
Madurai.

4.The Executive Engineer (Planning),
Madurai Corporation,
Madurai.

+One cc to M/s.Ajmal Associates, Advocate, SR.No.76910

+One cc to M/s.N.Shanmugaselvam, Advocate, SR.No.77277

+One cc to The Special Government Pleader, SR.No.77310

sm/er

RL/8C/6P/MR/KKR/SAR2/20/10/2017

W.P.(MD)No.7105 of 2016
(1/3)