

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. No.4665 of 2010 &
M.P.No.1 of 2010

G.Adhishesann

.. Petitioner

Vs.

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

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in order Na.Ka.7227/06/H1/T, dated 19.02.2007 on the file of the second respondent and order bearing Na.Ka.No.21938/2008/DB2 dated 10.02.2009 on the file of the first respondent and the Resolution No.258, dated 02.02.2007 from the second respondent quash the same, and consequently direct the respondents to sanction for conversion of petitioner's land situated at Survey Nos.132, 134 and 137/A1 of Ramanathapuram Village, Coimbatore South Taluk, Coimbatore District for residential usage.

(Prayer amended as per order dated 26.02.2018 in M.P.No.1 of 2015 in W.P.No.4665 of 2010)

For Petitioner : Mr.V.Perumal

For Respondents : Mr.V.Shanmuga Sundar

Special Government Pleader for R1

Mr.R.Sivakumar for R2

O R D E R

Heard Mr.V.Perumal, learned counsel for the petitioner; Mr.V.Shanmuga Sundar, learned Special Government Pleader for the first respondent; Mr.R.Sivakumar, learned counsel for the second respondent and perused the materials available on record.

2. This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the order of the second respondent dated 19.02.2007 and the order of the first respondent dated 10.02.2009 and consequently direct the respondents to sanction for conversion of land for the residential usage.

3. According to the petitioner, he became the absolute owner of the properties measuring about 5.92 acres comprised in Survey Nos.132, 134 and 137/A1 of Ramanathapuram Village, Coimbatore Taluk, Coimbatore District vide sale deeds dated 27.03.2003, 28.07.2004, 28.09.2004 and 27.12.2004. Since then, he has been in exclusive possession of the property. The further case of the petitioner is that his lands referred above were shown as park and play field in the Singanallur Detailed Development Plan No.48 and hence, his building plan application was not considered favourably.

4. The learned counsel for the petitioner submitted that Section 19 of Tamil Nadu Town and Country Planning Act, 1971, (In short "the Act") authorizes the Local Planning Authority to prepare a detailed development plan in respect of any land within its planning area and once the plan is prepared, he shall submit the plan to the Director under Section 21 of the Act, who in turn, shall accord his consent under Section 25 of the Act and direct the Local Planning Authority for publication of notice under Section 27(1) of the Act and the Local Planning Authority shall cause a publication in the Tamil Nadu Government Gazette and thereafter, submit the same for approval by the Government and the Director under Section 28 and 29 of the Act.

5. The further submission of the learned counsel for the petitioner is that Section 37 mandates acquisition of the property either through private agreement or by following the Land Acquisition Act and if the land is not acquired within a period of 3 years, the land shall be deemed to have been released under Section 38 of the Act.

6. It is submitted by the learned counsel for the petitioner that in the instant case, the publication was effected in the Official Gazette on 09.04.2003 and the limitation expires on 08.04.2006, but so far, no acquisition proceedings have been taken and hence, the land shall be deemed to be released as per Section 38 of the Act. The learned counsel places reliance on the decisions reported in (2010) 9 SCC 344 [Pillayar P.K.V.K.N. Trust vs. Karpaga N.N.U.S and Ors] and in 2017 (2) CWC 418 [M.Amsavalli Vs. The Director of Town and Country Planning] in support of his contentions.

7. In the counter filed by the second respondent, it is

stated that the impugned orders have been passed pursuant to the Resolution dated 02.02.2007 in Resolution No.258 and the present Writ Petition has been filed challenging the consequential order is not maintainable. It is further stated that the representation of the petitioner dated 14.07.2006 relates to re-classification of his lands and the power of the conversion of land usage in a development area is vested with the Government and the respondents have no power to order such re-classification of the land usage.

8. As rightly contended by the learned Standing Counsel for the second respondent, the power to reclassify the land is vest with the Government, but the Government is not made as a party in this Writ Petition. With regard to release of land as per Section 38 of the Act, the issue was considered by the Hon'ble Supreme Court in the case of of Pillayar P.K.V.K.N. Trust vs. Karpaga N.N.U.S and Ors. (supra), and it has been held as follows:-

"26. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 runs as under:

"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."

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the land concerned would certainly be deemed to have been released."

9. I had an occasion to consider a similar issue in M.Amsavalli Vs. The Director of Town and Country Planning (supra) and by following the principles laid down in K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another [2008 (2) MLJ 184] and P.Babu V. The Director, Town & Country Planning, Chennai [CDJ 2017 MHC 2551], held that since no steps have been taken by the respondents either to acquire the land or make publication

within a period of three years from the date of notification, lands are deemed to have been released from the acquisition as per the deeming provision of Section 38 of the Act.

10. In the case at hand, though the second respondent has filed a detailed counter, the date of publication of the Gazette Notification i.e., dated 09.04.2003 is not denied. Further the entire counter is silent about the acquisition of the property under Section 37 of the Act. In other words, the second respondent has admitted the date of publication of the Gazette Notification and non initiation of proceedings to acquire the property within the limitation period of three years.

11. In my considered opinion, the decisions referred supra, would squarely apply to the matter on hand. In that view of the matter, the respondents are directed to release the lands of the petitioner situated in Survey Nos. 132, 134 and 137/A1 of Ramanathapuram Village, Coimbatore South Taluk, Coimbatore District, by passing a Specific Order within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioner.

12. In the result, the Writ Petition is partly allowed. With regard to re-classification, liberty is given to the petitioner to approach the Competent Authority. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

r n s
To

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

2.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

+1 CC to Mr.V. Perumal, Advocate sr 45823.

+1 CC to The Govt. Pleader sr 45335.

+1 CC to Mr.R. Sivakumar, Advocate sr 45008.

W.P. No.4665 of 2010 &
M.P.No.1 of 2010

SP(07/08/2018)