

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.21033 of 2016
and
W.M.P.No.17996 of 2016

- 1.M.Rukmani
- 2.M.Sakthivel
- 3.M.Partiban
- 4.M.Prakash
- 5.A.M.Palanisamy
- 6.P.Prabhu
- 7.P.Pavithra Devi
- 8.Uma Rani
- 9.Vijayalakshmi
- 10.T.K.Krishnasamy

... Petitioners

Versus

- 1.Director of Country Planning,
Opposite to LIC,
Chengalvarayan Building,
Fourth Floor,
807, Anna Salai,
Chennai - 600 002.

- 2.Assistant Director /Public
Information Officer,
Coimbatore Local Planning Authority,
Corporation Building,
Sivanantha Colony,
Coimbatore - 12.

- 3.Member-Secretary,
Coimbatore Local Planning Authority,
Corporation Building,
Tatabad,
Coimbatore - 12.

- 4.Commissioner,
Coimbatore Corporation,
Coimbatore.

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, directing the respondents herein their subordinates to release the properties of the petitioners herein comprised in S.Nos.276/1, 276/2, 276/3, 278/2 and 278/3, No.20, Thudiyalur Village, Coimbatore North Taluk, Coimbatore District that are earmarked for Public Purposes for the location of the Thudiyalur Daily Market or road purposes in the Thudiyalur Detailed Development Plan No.III pursuant to the Notification issued under Section 23 of the Tamil Nadu Town and Country Planning Act, 1971 as amended therein and issued in Roc.No.41221/78 D3, No.VI(1)/461/79 and published in the Tamil Nadu Government Gazette, Part VI-Section 1, at pages 190 to 192, dated 09.05.1979 by the first respondent herein for the non-compliance of the mandatory provisions of sections 25, 27, 29 and 36 of the Town and Country Planning Act, 1971 as amended therein and the rules made therein by virtue of the operation of law viz., Section 38(b) of the said Act and direct the respondents to cancel the document bearing Doc.No.3306 of 1991 on the file of the Sub-Registrar, Periyanaickenpalayam, Coimbatore District in so far with respect to the lands of the petitioners herein are concerned.

For Petitioners : Mr.N.Damodaran

For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader, for R1 to R3
Mr.R.Sivakumar
Standing Counsel for R4

O R D E R

Heard Mr.N.Damodaran, learned counsel for the petitioner, Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1 to 3 and Mr.R.Sivakumar, learned Standing Counsel for the fourth respondent and perused the material documents available on record.

2. This writ petition has been filed seeking for issuance of writ of mandamus, directing the respondents to release the properties of the petitioners comprised in S.Nos.276/1, 276/2, 276/3, 278/2 and 278/3 situated at No.20, Thudiyalur Village, Coimbatore North Taluk, Coimbatore District.

3. According to the petitioners, one Late Marappan, was the original owner of the properties comprised in S.Nos.276/1 and 276/2, to an extent of 3.09 acres and 11 ¼ cents in Thudiyalur Village. After the demise of the said Marappan, on 16.11.1988, the properties devolved on the petitioners, as such they have been in possession and enjoyment of the same.

4. The petitioners would further state that the lands were sought to be included in the Detailed Development Plan of Thudiyalur Village and a document was prepared and registered as document No.3306 of 1991, dated 21.11.1991, by the Coimbatore Local Planning Authority in the Sub Registrar's Office, Periyanaickenpalayam, in respect of the land in S.Nos.276/1, 276/2 of Thudiyalur Village. The petitioners would further state that the second petitioner had sold the partition of his property in S.Nos.276/1 and 276/1A to some third parties.

5. The further case of the petitioners is that except issuing notification dated 09.05.1971, under Section 23 of the Tamil Nadu Town and Country Planning Act (hereinafter referred to as "the Act"), no further steps were taken under the provisions of Sections 27, 29 and 31 of the said Act. Further, as per the proviso to Sub Section (2) of 37 of the said Act, after a lapse of three years from the date of such notification, no declaration should be made under Sections 26 or 27 of the Act.

6. Therefore, the petitioners sent the representations dated 25.2.2014 and 28.2.2014, requesting the respondents to take appropriate steps to cancel the document No.3306 of 1991, dated 21.11.1991. Since, no order was passed, the present writ petition.

7. The learned counsel for the petitioners submitted that admittedly except issuing a notification under Section 23 of the Act on 21.01.1991 and registration of the documents, no action has been taken within the period of three years to acquire the land, hence, the Government has to lease the land as per Section 38 of the Act. In support of his contentions, the learned counsel produced the judgment of this Court made in W.P.No.136 of 2015, dated 15.10.2015, reported in <http://indiankanoon.org/doc/194164168/>.

8. Per contra, the learned Special Government Pleader appearing for the respondents 1 to 3 submitted that since a notification was already issued under the Act, the petitioners are not entitled for release of the land.

9. In the case on hand, it is not in dispute that the petitioners are the absolute owners of the land referred above. This Writ Petition has been filed mainly contending that the respondents issued notification under Section 23 of the Act in the year 1991, however, subsequently, the lands were not acquired by following the procedure under Sections 36 and 37 of the Act till date and after lapse of three years of the notification, the respondents have no authority to acquire the land. It is not the case of the respondents that pursuant to the notification under Section 23 of the Act, the lands of the

petitioners were acquired by following the procedure within three years.

10. The issue involved in this Writ Petition is no longer res integra. This Court has consistently held that if no acquisition proceedings were initiated in terms of Section 37 (2) of the Act, the land shall be deemed to have been released from the reservation. In a judgment reported in Indian Kanoon-<http://indiankanoon.org/doc/194164168/>, it has been held as follows:-

"7. It is pertinent to point out that as per Section 37 of the Tamil Nadu Town and Country Planning Act, if the planning authority has reserved any land at the disposal of any private person to be required for any purpose under the Detailed Development Plan in respect of which notice under Section 26 or 27, the same can be acquired by the Government by invoking the provision of the Land Acquisition Act, 1894 (Central Act 1/1894). However, Section 37 provides that no such acquisition can be effected after the expiry of three years from the date of issue of notice under Section 26 or 27 in respect of such lands. If no such acquisition is provided under Section 37(2) is effected in respect of any land reserved for any purpose specified in the detailed development plan, the land is deemed to have been released from such reservation, allotment or designation. As stated earlier, the Nagercoil Detailed Development Plan No.III was notified under Section 27 and provided under Section 29 of the Tamil Nadu Town and Country Planning Act as early as 2003 and the State Government has not taken any steps to effect any acquisition as provided under Section 37 of the Act till date and as such on the expiry of three years (i.e.with effect from 2006) the land is deemed to have been released from any reservation made under the detailed development plan. Hence, the respondents are not justified in refusing planning permission for construction by the petitioner on the ground of such reservation.

8. Further, I had an occasion to deal with the similar issue in M/s.Yaseen Builders(P) Ltd Vs. The Director of Town and Country Planning, Chennai and others and the same is also reported in CDJ 2012 MHC 6500, wherealso, this Court has allowed the similar prayer made therein.

9. In view of the fact foregoing discussions, I am of the opinion that as on date, the land in question is deemed to have been released from the reservation, allotment or designation, for the reason that no acquisition was made within a period of three years from the date of notification. Therefore, the rejection made by the first respondent by referring to the scheme of Nagercoil Detailed Development Plan No.III, is not legally sustainable. Hence, the order under challenge is liable to be quashed. Accordingly, the impugned order in the writ petition is quashed."

11. In the light of the decision referred supra and the facts of this case, in the considered opinion of this Court, the petitioners are entitled to succeed in this writ petition. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Director of Country Planning,
Opposite to LIC,
Chengalvarayan Building,
Fourth Floor,
807, Anna Salai,
Chennai - 600 002.

2.The Assistant Director /Public
Information Officer,
Coimbatore Local Planning Authority,
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3.The Member-Secretary,
Coimbatore Local Planning Authority,
Corporation Building,
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4.The Commissioner,
Coimbatore Corporation,
Coimbatore.

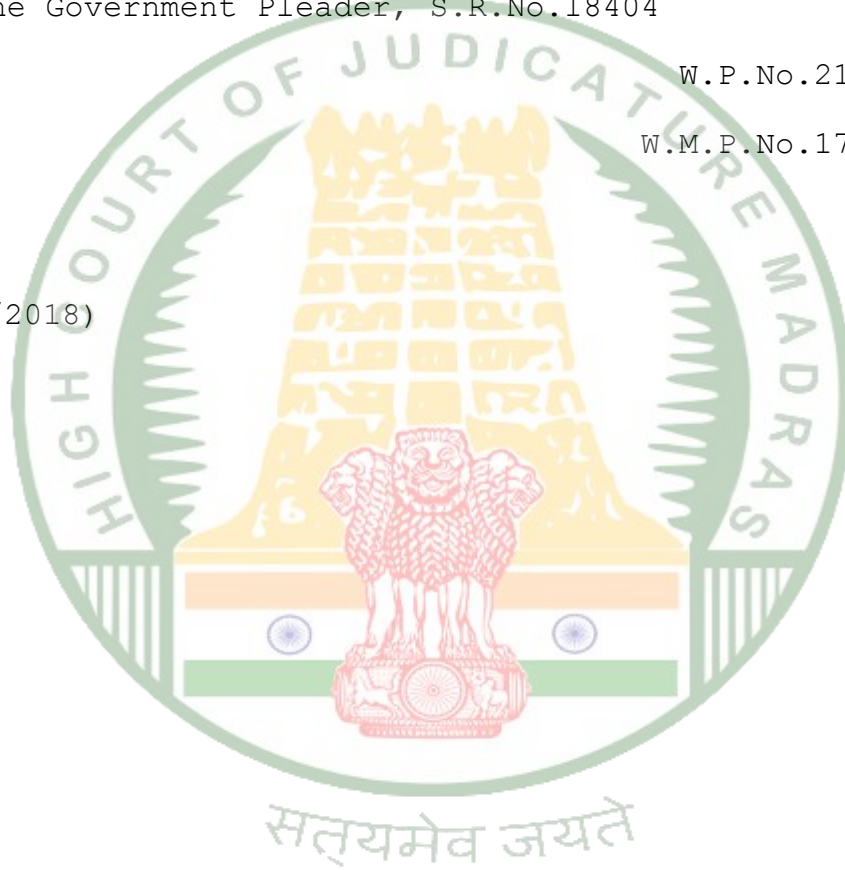
+1cc to Mr.N.Damodaran, Advocate, S.R.No.17634

+1cc to the Government Pleader, S.R.No.18404

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KAN(CO)

RRK(17/04/2018)



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