



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 07.06.2018
CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

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W.P. (MD) No.4764 of 2018

A.Balu

:Petitioner

Vs.

1. The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai.

2. The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Anna Maligai,
Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of declaration, to declare the reservation made in respect of the petitioner's land, in survey No.5/26B1, Sirudur Village, Madurai North Taluk, forming part of the Sirudur detailed development plan part I to have lapsed in light of Sec.38 of the Tamil Nadu Town and Country Planning Act, 1971 (TNAct 35 of 1974).

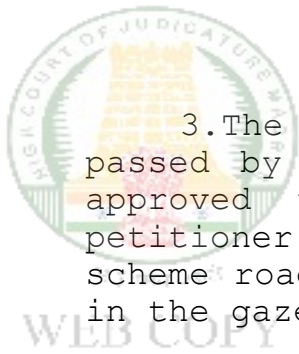
For Petitioner :Mr.M.Mahaboob Athiff
for M/s.Ajmal Associates

For Respondents :Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

The writ petition has been filed to declare the reservation made in respect of the petitioner's land in survey No.5/26B1, Sirudhur Village, Madurai North Taluk, forming part of the Sirudhur detailed development plan part I to have lapsed in light of Sec.38 of the Tamil Nadu Town and Country Planning Act, 1971 (TNAct 35 of 1974).

2.The case of the petitioner is that he purchased a property to an extent of 0.24.0 hectares in Survey No.5/26B1 at Sirudhur Village, Madurai North Taluk, Madurai District, through a registered sale deed, dated 12.07.1998 and since then, he has been in possession and enjoyment of the same. Patta was also issued in his favour by the Tasildhar, Madurai North Taluk.



3.The petitioner would state that pursuant to the resolution passed by the 2nd respondent, dated 08.03.1999, the 1st respondent approved the detailed development plan and the land of the petitioner in Survey No.5/26B1 has been reserved for a proposed scheme road. The said detailed development plan was also published in the gazette and approved by the 1st respondent on 21.07.1999.

4.The petitioner seeks declaration on the ground 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.The learned Special Government Pleader appearing for the respondents would submit that the land was originally acquired by the respondents in the year 1999. However, till date, 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. She further submitted that now steps are 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. Hence, the writ petition is liable to be dismissed.

6.Mr.M.Mahaboob Athiff, 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 both sides and perused the materials available on record.

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

"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.

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(2) On receipt of an application made under sub-section (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.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed 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 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 Siruthur Detailed Development Plan Part I was published in the year 1999, which was approved by the 1st respondent under section 29 of the Act, by his proceedings, dated 21.07.1999. 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.

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. The respondents are directed to release the petitioner's land, situated in Sy.No.5/26B1, Sirudhur Village, Madurai North Taluk, forming part of the Sirudhur detailed development plan part I 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.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai.
2. The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building,
Anna Maligai,
Madurai.

+1CC to M/s.Ajmal Associates, Advocate, SR.No.67528

W.P. (MD) No.4764 of 2018
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VS

ES/SV/MMS/SAR 1/20.06.2018/5P/4C

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