



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2018

CORAM:

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) Nos.16353 & 16359 of 2018

R.M.Loganathan

...Petitioner in
W.P. (MD) No.16353 of 2018

Chitra

...Petitioner in
W.P. (MD) No.16359 of 2018

vs .

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

2.The Member Secretary
Madurai Local Planning Authority
Madurai

...Respondents in both W.Ps.

PRAYER (in W.P. (MD) No.16353 of 2018): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration to declare the reservation made in respect of petitioners land in Survey Nos.24/2B, 24/3B, 24/3C, 31/1 and 32/2 at Ward No:25 of Sirudhur Village, Madurai North Taluk, Madurai in the Sirudhur Detailed Development Plan Part (III) to have lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

PRAYER (in W.P. (MD) No.16359 of 2018): Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration to declare the reservation made in respect of petitioners land in Survey No.29, at Ward No:25 of Sirudhur Village, Madurai North Taluk, Madurai in the Sirudhur Detailed Development Plan Part (III) to have lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.S.Poornachandran
(in both W.Ps.)

For Respondents : Mr.M.Jeyakumar

<https://hcservices.ecourts.gov.in/hcservices/> (in both W.Ps.) Additional Government Pleader



COMMON ORDER

The reliefs sought in both the writ petitions are similar and identical and the issues and grounds raised therein are also similar and identical and therefore, both the writ petitions have been taken together for common disposal as hereunder.

2. The petitioners are the residents of Madurai. They own lands, comprised in Survey Nos.24/2B, 24/3B, 24/3C, 31/1 and 32/2, measuring an extent of 6 Acres and 71 Cents and land comprised in Survey No.29, measuring an extent of 6 Acres and 81 Cents, respectively, situated at Sirudhur Village, Madurai North Taluk, Madurai. The petitioners are also having separate Pattas in respect of their properties. While so, they came to understand that a portion of their lands forms part of the project, namely, "Sirudhur Detailed Development Plan Part (III)" and has been reserved as a "Scheme Road" in the said Detailed Development Plan. The said Plan has been approved on the basis of the resolution of the second respondent, approved under Section 29 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter, referred to as "the Act") by the first respondent and also published in the Official Gazette, all took place in the year 1999.

3. Although the said Plan was approved as early as in the year 1999, till date the lands have not been acquired by the respondents and as on date, the same are in possession of the petitioners.

4. According to the learned counsel for the petitioners, if any land is reserved for a particular purpose, the same has to be acquired within a stipulated time, under Section 38 of the Act and in this case, although twenty years gone by, the lands have not been acquired by the respondents and therefore, the petitioners are before this Court for release of their lands.

5. The learned counsel appearing for the petitioners would straightaway draw the attention of this Court to the order, dated 07.06.2018, passed by the learned Judge of this Court in W.P.(MD) No.4687 of 2018, wherein the learned Judge of this Court, under similar circumstances, allowed the writ petition and ordered release of the land to the petitioner therein. The learned Judge of this Court has passed a detailed order, after adverting to the various provisions of the Act and referring various decisions rendered in this regard.

6. At this juncture, the learned Additional Government Pleader appearing for the respondents would submit that the respondents have no intention of acquiring the lands and therefore, the reliefs sought by the petitioners herein may be granted in terms of the rulings of the learned Judge of this Court



in the aforesaid writ petition.

7. In order to avoid repetition of the aforesaid decision, this Court thinks it fit to refer the operative portion of the order, namely, Paragraph Nos.7 to 13, which are extracted hereunder:

"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.

(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



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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 subsection (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, 1973 (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



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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**.

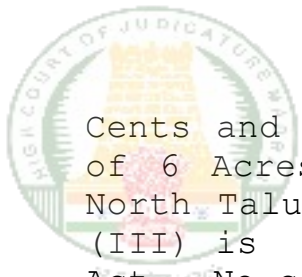
11.In the case on hand, it is specifically stated by the petitioner that the Siruthur Detailed Development Plan Part III was published in the year 1999. However, the acquisition proceedings are not completed within the stipulated time of three years. Hence, the reservation made under the detailed development 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 survey No.24/2C, Ward No.25, Sirudhur Village, Madurai North Taluk, Madurai in the Sirudhur detailed development plan part (III) 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.

8. From the pleadings and the materials as disclosed in the writ petitions, this Court is of the view that the above decision of the learned Judge of this Court can be squarely applied to the factual matrix of the present case and therefore, the present writ petitions are liable to be allowed.

9. In view of the above, these writ petitions are allowed and it is declared that the reservation made in respect of the petitioners' respective lands, comprised in Survey Nos.24/2B, 24/3B, 24/3C, 31/1 and 32/2, measuring an extent of 6 Acres and 71



Cents and the land comprised in Survey No.29, measuring an extent of 6 Acres and 81 Cents, situated at Sirudhur Village, Madurai North Taluk, Madurai, for Sirudhur Detailed Development Plan Part (III) is deemed to have lapsed in the light of Section 38 of the Act. No costs.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Director of Town and Country Planning,
807, Anna Salai, Chennai.
2. The Member Secretary,
Madurai Local Planning Authority,
Madurai.

+ 2 CC TO MR.S.POORNACHANDRAN, ADVOCATE IN SR NO.85404 & 85405
+ 2 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.85636 & 85663

KRK

BU/PM/SAR-I:10.10.2018 : 7P/7C

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