



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.836 of 2013

V.R.Rakkappan
S/o.Veerappa Servai
Managing Partner
M/s.Cauvery Enterprises
No.162, Big Bazaar Street
Tiruchi-620 008

... Petitioner

vs.

1.The Director of Town and Country Planning
807, Anna Salai
(Opp.to LIC Building)
Chennai-600 002

2.Assistant Director / Member Secretary
Tiruchi Local Planning Authority
10, Williams Road
Cantonment, Tiruchirappalli-620 001

3.The Assistant Director
Town and Country Planning
10, Williams Road
Cantonment, Tiruchirappalli-620 001

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of declaration declaring that three pieces of lands mentioned against item No.(i) in S.F.No.152/3, item No.(ii) in S.F.No.152/4A and item No.(iii) in S.F.No.153/2 shown as park and green strip in the proceedings of the 1st respondent in ROC.No.8796 dated 2005 (DP-3) are deemed to be released from such reservation /designation in the detailed development plan pertaining to Goldenrock Zone.

For Petitioner : Mr.M.Mahaboob Athiff
for Mr.T.Antony Arul Raj

For Respondents : Mr.C.M.Mari Chelliah Prabhu
Additional Government Pleader

O R D E R

The petitioner is a proprietary concern formed in the year 1972 with an object of promoting and selling house plots at affordable price to the general public. In furtherance to the object, an extent of 32.79 Acres of dry lands, comprised in SF.Nos.152 (Part), 153 (Part), 154/1, 154/2 and 155 were purchased under a sale deed registered as document No.2890 of 1972. The entire extent of lands was converted into housing plots numbering 264 leaving sufficient space for road purpose and other public utilities as required by the relevant provisions of the Act and the Rules.

2. According to the petitioner, the layout plan was duly sanctioned by the then Special Officer of Goldenrock Municipality, vide proceedings No.3134/72, dated 25.04.1973 (Plan No.2/73). This sanction was given in pursuance of the approval given by the Deputy Director of Town Planning, Tiruchi - Thanjavur Division, vide letter No.1083/73, dated 13.03.1983. The layout lands were set apart for construction of one Maternity and Child Welfare Centre, location of one Market and one Shopping Arcade, setting up of two children play fields, one School with Playground and formation of one Park.

3. The entire 264 plots were sold out by the end of June, 1984, except three blocks of lands set apart for future development. According to the petitioner, the lands meant for common purpose were handed over to the Local Authority and the said common area was very much available. While so, lands measuring about 24,000 sq.ft., 10,000 sq.ft., and 9,000 sq.ft., comprised in SF.Nos.152/3, 152/4A and 153/2 respectively, were kept vacant and the petitioner had decided to dispose of the same and for the said purpose, a power of attorney, dated 07.09.2009 and registered as document No.821 of 2009, was executed in favour of Martin, son of Irudayasamy and Selvaraj, son of Thangaraj.

4. While matter stood thus, the petitioner came to know that on 14.09.2005, the first respondent, while according approval for the revised detailed development plan for "Goldenrock Zone" had shown the aforementioned three items of lands as Park and Green Strip. In such circumstances, on 21.07.2010, a request was made by the petitioner to the first respondent seeking to cancel the said proceedings. Thereafter, in that regard, there had been a constant exchange of communications between the petitioner and the respondents. However, despite several years lapsed, the respondents have not taken over the subject land till date and the same is vested only with the petitioner. Unfortunately, due to the reservation made in the development plan for "Goldenrock Zone", the subject land could not be developed by the petitioner and therefore, he is before this Court seeking for issuance of a writ of declaration declaring that the subject land shown as Park and Green Strip is deemed to be released from such reservation / designation in the detailed development plan pertaining to Goldenrock Zone.



5. After notice, a detailed counter affidavit has been filed on behalf of the respondents. However, the facts as mentioned in the affidavit filed in support of the writ petition, have not been controverted by the respondents seriously.

WEB COPY

6. The learned counsel appearing for the petitioner, at the time of hearing, would submit that the entire issue is covered by the order of this Court, dated 28.03.2017, made in W.P.(MD) No.4753 of 2017, wherein this Court has directed the Authority concerned to release the petitioner's lands therein holding that the reservation made for Kochadai Detailed Development Plan No.3 is deemed to have lapsed, since no action was initiated by the Authority concerned to acquire the lands within a period of three years from the date of reservation. This Court has followed the earlier precedent on the subject matter and allowed the said writ petition. The learned counsel, in support of his contentions, would draw the attention of this Court to Paragraph Nos.5 to 8 of the order passed by this Court in the aforesaid writ petition, which are extracted hereunder:

"5. Heard, Mr.R.Karunanidhi, the learned counsel for the petitioner and Mr.K.Mahesh Raja, the learned Government Advocate appearing for the respondents.

6. According to the learned counsel for the petitioner, the entire issue raised by the writ petitioner is squarely covered by the order passed by the Division Bench of this Court reported in (2011) 8 MLJ 437 in the matter of Commissioner, Aruppukottai Municipality v. K.S.Kamakshi Chetty and others. According to the order passed by the Division Bench, when no steps have been taken for completing the acquisition within 3 years period and when the property earmarked for the purpose has not been utilized as per the notification, the property would be deemed to have released from reservation, allotment or designation as per Section 38 of the Tamil Nadu Town Country Planning Act, 1973.

7. The learned counsel for the petitioner would also relied upon the order passed by this Court in W.P.(MD) No.14456 of 2014 dated 27.02.2017 in which a direction was issued in identical set of facts and circumstances directing to release of the land belonging to the petitioners therein from "Kochadai Detailed Development Plan Nos.2, 3 and 7", based on the direction issued by the Division Bench of this Court. Since the present writ petition directly covered by the aforesaid decision and the direction issued by this Court squarely cover the claim of the petitioner herein, there is no impediment to allow the writ petition as prayed for.

8. In the circumstances, the Writ Petition is allowed. The respondents are directed to release



the petitioner's land measuring of 8.77 cents situated in old Survey No.79/1 and Town Survey No.17/1B in Kochadai Village, New Ward No.22, Madurai West Taluk, Madurai District from "Kochadai Detailed Development Plan No.3" by passing a specific order within a period of two weeks from the date of receipt of copy of this order and communicate the same to the petitioner. There is no order as to costs."

7. From the above, it is clear that the issue as raised in this writ petition is squarely covered by the order passed by this Court in the above said writ petition, wherein this Court has followed the earlier orders issued in this regard and allowed the similar claim.

8. When the reservation / designation of the subject land has not been fructified into by acquiring the same, within a period of three years, in terms of the relevant provisions of the Act, it is deemed to have lapsed and such reservation is no more valid in the eye of law.

9. In view of the categorical legal position as laid down by this Court in the earlier writ petition, this Court has no hesitation to allow the present writ petition.

10. Accordingly, the writ petition is allowed and it is declared that the reservation made in respect of the subject land, comprised in SF.Nos.152/3, 152/4A and 153/2, by the first respondent vide R.O.C.No.8796 dated 2005 (DP-3) is deemed to have lapsed, in the light of Section 38 of the Act. No costs.

Sd/-

Assistant Registrar(C.O)

/True Copy/

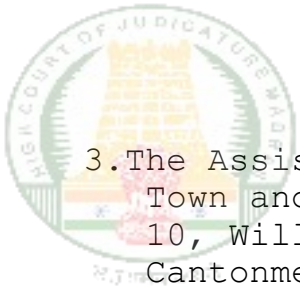
Sub Assistant Registrar(CS-I)

krk

To:

1.The Director of Town and Country Planning,
807, Anna Salai,
(Opp.to LIC Building),
Chennai-600 002.

2.The Assistant Director / Member Secretary,
Tiruchi Local Planning Authority,
10, Williams Road,
Cantonment, Tiruchirappalli-620 001.



3.The Assistant Director,
Town and Country Planning,
10, Williams Road,
Cantonment, Tiruchirappalli-620 001.

WEB COPY

+1cc to The Spl Government Pleader, Advocate in SR No.91790
+2cc to Mr.T.Antony Arul Raj, Advocate in SR No.92349 & 91835

W.P. (MD) No.836 of 2013

NM/RP/SAR I/01.11.18/5P/7C