

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2019

PRONOUNCED ON : 21.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.1941 of 2019

M/s.PARS Engineering India Private Limited,
Having its Registered Office at,
3B/1, Rank Paradise,
Mullai Nagar,
Bhodinayakan Patti,
Sooramangalam Post,
Salem - 636 005.
Represented by its Managing
Director Mr.D.Shanmugavel

....Petitioner

Vs

1.The Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai - 600 015.

2.The Director,
Town Planning,
No.807, Anna Salai,
Chennai - 600 002.

3.The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore Corporation Complex,
Raju Naidu Street,
Tatabad, Sivananda Colony,
Coimbatore - 641 012.

4.The Commissioner,
Coimbatore Corporation,
Town Hall,
Coimbatore - 641 001.

...Respondents

Prayer :- This Writ Petition is filed under Article 226
of the Constitution of India for a writ of Mandamus directing

the respondents herein to declare that the petitioner's land comprised in S.F.No.194/A, 195/4 and 195/2A, Kalapatti Village, Coimbatore North Taluk, Coimbatore is deemed to be released from the reservation of Section 38 of the Town and Country Planning Act, 1971 and consequently direct the respondents to pass an appropriate order to release the petitioner's land comprised in Survey Number 194A, Kalapatti Village, Coimbatore North Taluk, Coimbatore.

For petitioner : Mr.P.Chandrasekaran
For Respondents
1 to 3 : Mr.R.Govindasamy,
Special Government Pleader
For 4th
Respondent : Mr.K.Magesh

ORDER

Seeking a direction to the respondents to declare that the petitioner's land comprised in S.F.Nos.194/A, 195/4 and 195/2A, Kalapatti Village, Coimbatore North Taluk, Coimbatore, is deemed to be released from the reservation of Section 38 of the Town and Country Planning Act, 1971 (hereinafter referred to as "the Act") and consequently, direct the respondents to pass an appropriate order to release the petitioner's land comprised in survey number S.F.Nos.194/A, 195/4 and 195/2A, Kalapatti Village, Coimbatore North Taluk, Coimbatore, the petitioner is before this Court with this writ petition.

2.Heard the learned counsel for the petitioner; learned Special Government Pleader appearing for the respondents 1 to 3 and the learned counsel for the fourth respondent.

3.The petitioner has purchased the land in S.F.Nos.194/A, 195/4 and 195/2A, Kalapatti Village, Coimbatore North Taluk, Coimbatore, vide sale deed dated 24.01.2018. When the petitioner company came to know that the said land is under 'reservation' under Section 38 of the Act, a representation was given to the Director, Town and Country Planning, Chennai, to release the said land from the reservation. The attempt to release the land from reservation ended in futile, the present writ petition is filed.

4.The contention of the petitioner is that, the land which he purchased under sale deed dated 24.01.2018 is earmarked for 80' wide 'AA' road and 60' wide 'B1B1' road in the detailed development plan. So, he is not able to get approval for the land since, the said land is reserved for 'public purpose' under Section 38 of the Act. The land reserved for 'public purpose'

under the detailed development plan, has to be acquired, within a period of three years from the date of notification. Till date, there is no acquisition of the said land. Therefore, after lapse of 25 years from the date of approval of the detailed development plan, the land reserved for 'public purpose' is deemed to be released. Therefore, he sought for mandamus to direct the respondents to declare that the petitioner's land is deemed to be released from the reservation under Section 38 of the Act, and direct the respondents to pass appropriate order to release the petitioner land.

5.The third respondent has filed a counter affidavit wherein, it is stated that the property of the petitioner is covered under the detailed development plan No.10 pertaining to Kalapatti Village, Coimbatore. The petitioner's property falls on the proposed scheme road which runs South to North and East to west. It also connects the other existing road. The detailed development plan in D.D.P.(CNR)/DTCP No.65/94 dated 17.03.1994 was given with the consent of the second respondent, in compliance with Section 25 of the Act. The detailed development plan was drawn in accordance with law and the petitioner can have no objection in this regard. If at all, the petitioner have any objection, in the detailed development plan, it is always open to him to seek for variation under Section 33(1) of the Act.

6.When the petitioner sought for deletion of detailed development plan, the third respondent has forwarded the application with queries to the Assistant Commissioner, Coimbatore East. The application of the petitioner is under process. As of now, there is no acquisition proceedings initiated against the said land and therefore, there is no necessity for the petitioner to invoke the jurisdiction of this Court.

7.The learned counsel for the petitioner would submit that under similar circumstances, this Court in S.Anand v. Secretary, Housing and Urban Development Department (2017(1) CTC 175) has held that after the detailed development plan for Coimbatore local planning area, been approved under Section 28 of the Act and subsequent notification of the same vide G.O.Ms.No.661 dated 12.10.1994, nothing has progressed. No acquisition proceeding was initiated, within the period of three years from the date of the said notification. Under proviso to sub section 2 of section 37 of the Act, declaration under the Land Acquisition Act, ought to have been made, within a period of three years. When no such declaration under land acquisition is made within a period of three years, the land shall be deemed to be released as per Section 38 of the Act.

8.It is an admitted fact that the detailed development plan covering the petitioner land was approved and later notified on 17.03.1994. In the counter affidavit, the third respondent has also categorically admits that, no acquisition proceeding has so far been initiated, as per the said detailed development plan. While so, it goes without saying that under Section 38 of the Act, the land deemed to be released from any reservation, allotment or designation for the said purpose.

9.As far as the request of the petitioner in the writ petition to remove the proposed scheme road from the detailed development plan, is not within the scope of the writ petition since, the detailed development plan has been approved by the Government, after following due process of law.

10.In the said circumstances, the respondents are hereby directed to consider the representation of the petitioner to release his land in S.F.Nos.194/A, 195/4 and 195/2A, Kalapatti Village, Coimbatore North Taluk, Coimbatore, taking note of the provisions under the Town and Country Planning Act, more particularly, Section 38 of the Act, pass appropriate orders, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. This above direction will not stand in the way of the respondents from revising the detailed development plan or to acquire the petitioner land under any other law in force, by following the due process of law.

11.With the above direction, the writ petition is disposed of. No costs.

jbm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Housing and Urban Development Department,
Fort St. George,
Chennai .

2.The Director,
Town Planning,
No.807, Anna Salai,
Chennai - 600 002.

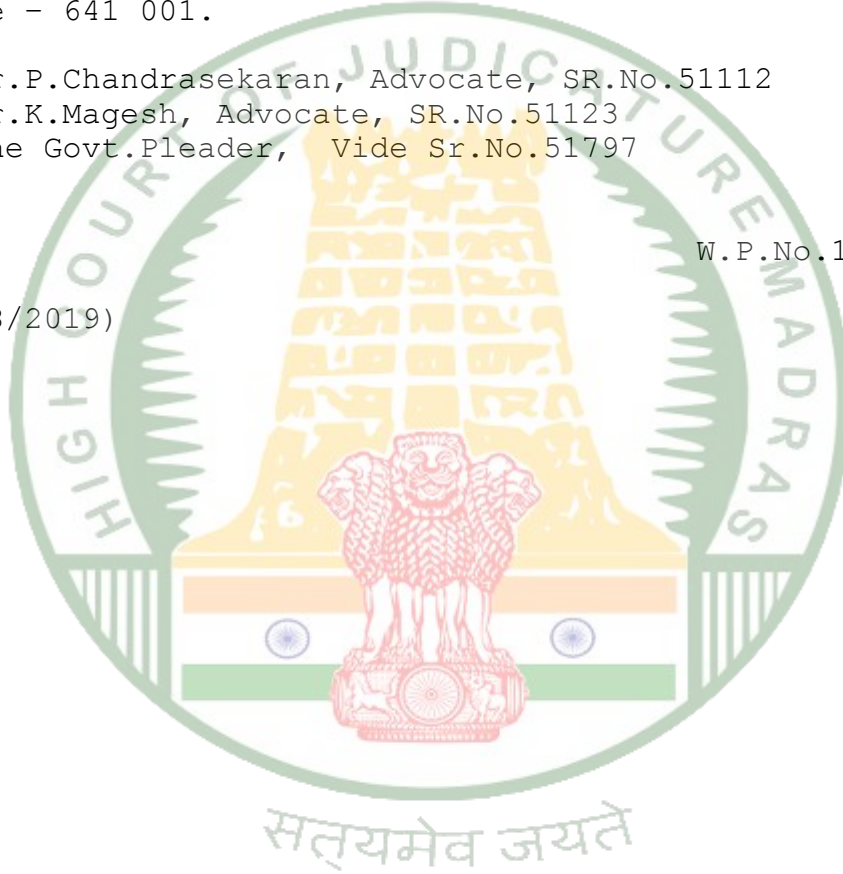
3.The Member Secretary,
Coimbatore Local Planning Authority,
Coimbatore Corporation Complex,
Raju Naidu Street,
Tatabad,
Sivananda Colony,
Coimbatore - 641 012.

4.The Commissioner,
Coimbatore Corporation,
Town Hall,
Coimbatore - 641 001.

+1cc to Mr.P.Chandrasekaran, Advocate, SR.No.51112
+1cc to Mr.K.Magesh, Advocate, SR.No.51123
+1cc to the Govt.Pleader, Vide Sr.No.51797

W.P.No.1941 of 2019

Kak(01/08/2019)



WEB COPY