



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5652 of 2019

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L.K.S.Mohamed Meera Mohaideen,
Secretary,
Al Islam Arts and Science College,
Netaji Road, Melapalayam,
Tirunelveli District.

... Petitioner

Vs

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

2. The Member Secretary,
Tirunelveli Local Planning Authority,
Xavier Colony, South Outer Road,
Tirunelveli.

3. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

... Respondents

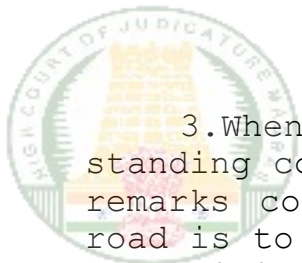
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration, to declare the reservation made in respect of the petitioner's land in ward No.4, Block No.36 for the proposed D-D and E1-E1 Scheme Roads under the Melapalayam Detailed Development Plan No.1, to have lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TNACT 35 of 1974) and consequently direct the respondents to accord planning approval for the development of the petitioner's college without insisting the petitioner to donate the said scheme roads free of cost in favour of the third respondent Commissioner.

For Petitioner : Mr.Mohaboob Athiff for
M/s.Ajmal Associates
For Respondents : Mr.Selvakumar

ORDER

Heard the learned counsel on either side.

2.The petition mentioned lands were shown in the Melapalayam Detailed Development Plan No.1 was published in the year 1994. However, no follow up action was taken for acquiring the petition mentioned lands. Therefore, the petitioner has filed this writ petition and he invokes Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.



3. When the matter was taken up for hearing, the learned standing counsel appearing for the respondents contended that in the remarks column, it has been mentioned that the petition mentioned road is to be developed and formed by the owners and that is why the authorities did not initiate steps for acquiring the said lands.

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4. I am not persuaded by the said submission. The remarks made by the authority are not in consonance with Section 38 of the Tamil Nadu Town and Country Planning Act, 1971. When certain land are sought to be shown as a scheme road, after showing the same, the respondents ought to have acquired the said lands. Otherwise the consequence will be that it would be deemed to have lapsed.

5. The learned standing counsel brought to my notice that the petitioner has given an undertaking affidavit that he would hand over the petition mentioned lands in favour of the local body free of cost. He therefore, wanted this Court to dismiss the writ petition.

6. Section 38 of the Act reads as under :

"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."

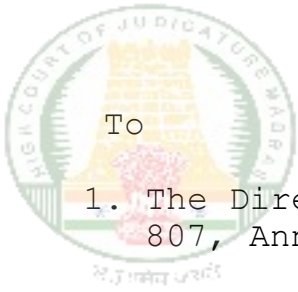
7. Therefore, I hold that since within a period of three years from the date of publishing the detailed development plan, the consequential steps have not been taken, the petition mentioned lands shall be deemed to be released from such reservation. Therefore, the petitioner is entitled to the declaration sought for. However, the writ petition is partly allowed as mentioned above. As regards the other prayer for approval, it is for the petitioner to work out his remedies before the competent forum. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)



To

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

2. The Member Secretary,
Tirunelveli Local Planning Authority,
Xavier Colony, South Outer Road,
Tirunelveli.

3. The Commissioner,
Tirunelveli Corporation,
Tirunelveli.

+1 CC to SPL GP (SR-61590[F] dated 22/04/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-61457[F] dated
22/04/2019)

W.P. (MD) No. 5652 of 2019

16.04.2019

SKM

MK (05.07.2019) 3P 6C