



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.04.2019

Pronounced on : 24.06.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.15245 & 15246 of 2018

P.S.Ramanidevi ... Petitioner in WP(MD)No.15245 of 2018

R.Chittammal ... Petitioner in WP(MD)No.15246 of 2019

Vs.

1.The Commissioner,
Rajapalayam Municipality,
Rajapalayam.

2.The Executive Authority,
Local Planning Authority,
Rajapalayam.

3.The Commissioner / Director,
Town and Country Planning,
Anna Salai, Chennai - 2.

... Respondents in both cases

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the Pudupalayam Detailed Development Plan published in the TNGG dated 10.06.1981 lapsed insofar as the lands of the petitioner in Old S.No.361/3 of an extent of 0.3402.0 sq.mt in T.S No.162/1 and 0.0225.0 sq.mt in T.S.No.178/2 of Pudupalayam Village, Rajapalayam Taluk.

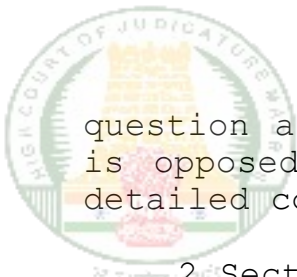
For Petitioner
in both cases : Mr.A.Sivaji

For Respondents
in both cases : Mr.N.Dilipkumar for R1

Mr.M.Rajarajan, Government Advocate
for R2 & R3

COMMON ORDER

The case of the petitioners is that the petition mentioned lands were earmarked for road purpose under the Pudupalayam Detailed Development Plan. The notification in this regard was published way back in the year 1981. But then, there was no follow up action on the part of the respondents for acquiring the lands in question. Therefore, these writ petitions have been filed seeking declaration that the scheme in question had lapsed insofar as the lands in



question are concerned. The prayer made in these writ petitions is opposed by the first respondent municipality. It has filed a detailed counter affidavit.

2. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 reads as follows :

"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."

This provision was invoked to grant relief to the writ petitioner by the Hon'ble Division Bench in the decision reported in (2011) 8 MLJ 437 (Commissioner, Aruppukottai Municipality, Aruppukottai vs. K.S.Kamakshi Chetty and Others). The Hon'ble Division Bench held as follows :

"19. Looking at from any angle, we are of the considered view that the property earmarked for the purpose was not utilised as per the Notification and no steps admittedly were taken by the Authority to acquire the property and therefore, as per Section 38 of the Act 35 of 1972, the property was deemed to be released from such reservation, allotment or designation."

The ratio laid down in the aforesaid decision has been followed in countless subsequent cases. The learned counsel for the petitioners has also filed a compilation of case laws.

3. The lands in question belonging to the petitioners were not acquired within a period of three years from the date of the said notification. Therefore, respectfully following the aforesaid ratio laid down by the Hon'ble Division Bench of this Court, I hold that the Pudupalayam Detailed Development Plan published in the Tamil Nadu Government Gazette dated 10.06.1981 stood lapsed insofar as the petitioners' lands are concerned. Accordingly, these writ petitions stand allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Commissioner, Rajapalayam Municipality, Rajapalayam.

2.The Executive Authority, Local Planning Authority, Rajapalayam.

3.The Commissioner / Director, Town and Country Planning,
Anna Salai, Chennai - 2.

+2cc to Mr.A.SIVAJI, Advocate, SR.No.71086,71087

**order made in
W.P(MD)Nos.15245 & 15246 of 2018**

SKM

KK/SAR/26.06.2019/3P-6C