



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

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THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P(MD) No.19424 of 2019

1.P.K.Ramkumar
2.P.S.Priya Raja
(rep.by father and power agent
P.D.Kasivisanatha Raja) ... Petitioners

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

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration declaring that the Pudupalayam Town planning Scheme II, Rajapalayam published in G.O.Ms.No.2466 Rural Development and Local Administration Dept dated 15.12.1969 as published in the TNGG dt 21.1.1970 part II Section 2 page 120 lapsed in so far as it relates to the lands of the petitioners in S.No.428/1 to 3 of Pudupalayam Village, Rajapalayam Taluk.

For Petitioners : Mr.A.Sivaji

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

By consent, the writ petition itself is taken up for final disposal at the stage of admission.



The case of the petitioners is that the petition mentioned lands were earmarked for road purpose under the Pudupalayam Town planning Scheme II, Rajapalayam. The notification in this regard was published way back in the year 1970. But then, there was no follow up action from the respondents for acquiring the lands in question. Therefore, this writ petition has been filed seeking declaration that the scheme in question had lapsed insofar as the lands in question are concerned. The prayer made in this writ petition is opposed by the respondents.

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

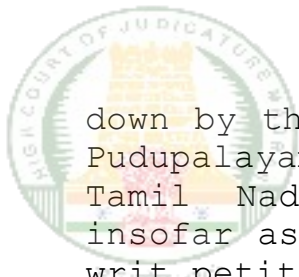
(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

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.

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, following the aforesaid ratio laid



down by the Hon'ble Division Bench of this Court, I hold that the Pudupalayam Town planning Scheme II, Rajapalayam published in the Tamil Nadu Government Gazette dated 21.01.1970 stood lapsed insofar as the petitioners' lands are concerned. Accordingly, this writ petition is allowed. No costs.

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Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

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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.

+1 CC to M/s.A.SIVAJI, Advocate (SR-86733[F] dated 16/09/2019)

+1 CC to M/s.SPL GP (SR-86940[F] dated 16/09/2019)

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