



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD)No.4694 of 2011

(Through the Video Conferencing)

WEB COPY

S.Ramachandran

... Petitioner

Vs

1.The Director of Town and Country Planning,
No.807, Anna Salai, Chennai-600 002.

2.The Member Secretary,
Tirunelveli Local Planning Authority,
Tirunelveli-2.

3.The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order of the second respondent dated 05.03.2011 vide ref.Na.Ka.No.269/2011, (Tirunelveli Local Planning Authority) and quash the same and direct the respondents to permit the petitioner to develop the land and put up construction in the petitioner's land measuring to an extent of 38.67 cents in Survey No.287/3A in Vijayaraghava Mudaliar Chatram Village in Palayamkottai Taluk, Tirunelveli District, by treating the land as released from the reservation of any public purpose as per the detailed development plan prepared by the respondents under the provisions of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.K.Navaneetharaja
for Mr.V.Balaji

For R-1 : Mr.C.Ramar
Additional Government Pleader

For R-2 : No Appearance

For R-3 : Mr.Aayiram K.Selvakumar
Standing Counsel

ORDER

This writ petition has been filed challenging the order dated 05.03.2011 passed by the second respondent rejecting the petitioner's application seeking for planning permit for the following three reasons:-

<https://hcservices.ecourts.gov.in/hcservices/>



(a). There is a proposal for land acquisition by the State in respect of the petitioner's property.

(b). The proposed construction site is situated adjacent to the Northern side of tomb and therefore, the petitioner is not entitled for planning permit as per Rule 6 (5) of the Tamil Nadu District Municipalities Building Rules, 1972.

(c). The approach road to the community hall must have nine meters width, but, in the proposed plan submitted by the petitioner for construction of community hall it is only six meters width.

2. Aggrieved by the order dated 05.03.2011 passed by the second respondent, this Writ Petition has been filed.

3. Heard Mr.K.Navaneetharaja, learned counsel representing Mr.V.Balaji, learned counsel for the petitioner, Mr.C.Ramar, learned Additional Government Pleader for the first respondent and Mr.Aayiram K.Selvakumar, learned Standing counsel for the third respondent.

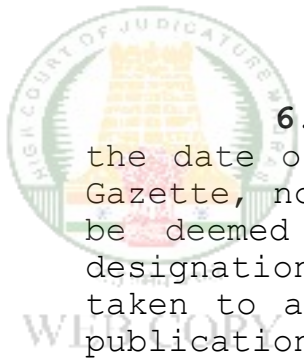
4. Insofar as the first ground for rejection of the petitioner's planning permit is concerned, the learned Additional Government Pleader for the first respondent, on instructions, would submit that after referring to Paragraph No.4 of the additional counter affidavit filed by the second respondent, now, there is no proposal to acquire the petitioner's land. Admittedly, the Gazette publication for the proposed land acquisition of the petitioner's property was effected on 02.04.2007. Admittedly, thereafter, no steps have been taken by the respondents to acquire the said lands of the petitioner.

5. Section 38 of the 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."



6. As per the aforesaid Section, if within three years from the date of publication of the notice in the Tamil Nadu Government Gazette, no steps have been taken to acquire lands, such lands shall be deemed to be released from such reservation / allotment / designation. In the case on hand, admittedly, no steps have been taken to acquire the petitioner's land after effecting the Gazette publication on 02.04.2007.

7. Since more than 13 years have lapsed after effecting the Gazette publication as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the land of the petitioner shall stand released from any acquisition. Therefore, the first ground for rejection in the impugned order has to be set aside by this Court.

8. However, with regard to the second reason for rejection, namely, the approach road to the community hall must have nine meters width, but, in the proposed plan submitted by the petitioner for construction of community hall it is only six meters width and the third reason for rejection, namely, the proposed construction site is situated adjacent to the Northern side of tomb are concerned, the same will have to be considered afresh by the second respondent, since the learned counsel for the petitioner on instructions would submit that the petitioner is ready and willing to satisfy the second respondent with regard to the same, if he has provided with one more opportunity by this court.

9. No prejudice will be caused to the respondents, if the application of the petitioner is reconsidered by the second respondent in the light of the directions given by this Court in this order.

10. For the foregoing reasons, the following directions are issued by this Court.

(a). Insofar as the first ground for rejection of the petitioner's application for building sanction, namely, the subject land of the petitioner falls within the proposed land acquisition area, the same is set aside by this Court under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, since no steps have been taken by the respondents within a period of three years subsequent to the Gazette publication effected on 02.04.2007.

(b). Insofar as the second and third grounds for rejection of the petitioner's application for planning permit by the second respondent namely, a). the proposed construction site is situated adjacent to the Northern side of tomb and therefore, the petitioner is not entitled for planning permit as per Rule 6(5) of the Tamil Nadu District Municipalities Building Rules, 1972 and (b). the approach road to the community hall must have nine meters width, but, in the proposed plan submitted by the petitioner for



construction of community hall it is only six meters width are concerned, the matter is remanded back to the second respondent for fresh consideration with regard to those two issues only and the second respondent shall pass final orders on merits and in accordance with law after giving adequate opportunity to the petitioner to satisfy the requirements of the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order.

11. With the aforesaid direction, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Director of Town and Country Planning,
No.807, Anna Salai, Chennai-600 002.

2.The Member Secretary,
Tirunelveli Local Planning Authority,
Tirunelveli-2.

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-26281[F] dated 18/12/2020)

+1 CC to M/s.GP (SR-26234[F] dated 18/12/2020)

Order made in
W.P. (MD)No.4694 of 2011
Dated :
17.12.2020

(CK) CO

AP(30/12/2020) 4P 5C