



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2020

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD)No.1202 of 2020

M/s.Thamizh Constructions (P) Limited,
represented by its Managing Director,
P.Prabhakar
as Power Agent of
M.K.P.Kannan and K.Kalaiselvi

... Petitioner

vs .

1. The Secretary to Government,
Housing and Urban Development Department,
The Secretariat, Chennai.
2. The Director of Town and Country Planning,
No.807, Anna Salai, Chennai -02.
3. The District Collector,
Trichy District, Trichy.
4. The Member Secretary,
Trichy Local Planning Authority,
Corporation Office Building,
Kajamalai, Trichy.
5. Trichy Corporation,
through its Commissioner,
Bharathidasan Salai, Trichy.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration, to declare the reservation made in respect of the petitioners land in Writ of Declaration that the petitioner's principal's property in T.S.No.2424/32 an extent of 1 Acre 64 cents are released from such reservation as per Section 38 of the Tamil Nadu Town Country Planning Act and consequently to direct the respondents to issue appropriate order releasing our property T.S.No.2424/32 an extent of 1 acre 65 cents from the Trichy Corporation by Pass Road detailed Development Plan No.IV, in light of the judgment of this Court in Commissioner, Aruppukottai Municipality vs Kamakshi Shetty, reported in 2011 (8) MLJ 437 and consequently to direct the third and fourth



respondents to make necessary entry regarding lapse of the Trichy Corporation By Pass Road Detailed Development Plan No.IV in respect of petitioner's property

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For Petitioner	: Mr.A.R.L.Sundaresan Senior Counsel for Mr.J.Anandkumar
For R1 to R4	: Mr.M.Murugan Government Advocate
For R5	: Mr.S.Saji Bino

O R D E R

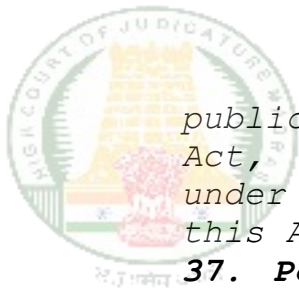
The brief facts that are set out in the affidavit filed in support of this petition are as follows:

2.The petitioner has filed this Writ Petition as power of attorney agent of K.P.Kannan and A.Kalaiselvi. The petitioner's principals are the owners of the property measuring to an extent of 1 acre 65 cents in T.S.No.2424 in Thimmarayasamuthiram Village, Ward No.3, Srirangam, Trichy District. It is stated that the revenue records in respect of the property also stand in the name of petitioner's principals from the year 1986.

3.It is the case of the petitioner that as power of attorney agent, the deponent was assigned the task of formation of a lay out to develop the properties, as house site plots. When the petitioner approached the fourth respondent for permission to convert the property as residential plots during October'2019, the request of the petitioner was rejected, stating that the property in T.S.No.2424/32 comes under the Trichy Corporation By-Pass Road Detailed Development Plan No.IV. As per Plan No.IV, it is stated that the portion of land within the holdings of the principals has been reserved as Park site. Since Detailed Development Plan was issued in 1986, the petitioner submitted that the land, which was reserved for the public purpose as per the Detailed Development Plan, cannot be continued, when the land has not been acquired within three years of publication of Detailed Development Plan.

4.It is not the case of any of the respondents that the Detailed Development Plan was prepared or modified recently. It is worthwhile to refer to the provisions of the Tamil Nadu Town and Country Planning Act 1971, particularly, Sections 36, 37 and 38 of the Act, which runs as follows:

"36. Power to acquire land under the Land Acquisition Act.- Any land required, reserved or designated in a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, shall be deemed to be land needed for a



public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act I of 1894) and may be acquired under the said Act as modified in the manner provided in this Act.

37. Power to purchase or acquire lands specified in the development plan.-

(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

Provided that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

Provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

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



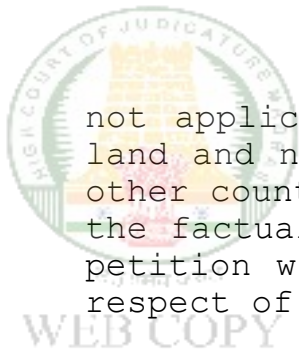
declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or (b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation."

5. In the present case, the Detailed Development Plan stated to be prepared long back, had not come into effect by developing the entire area as per the Detailed Development Plan. The respondents have not produced before this Court, the Detailed Development Plan or the particulars regarding the preparation and approval and publication of the plan within three years to contend that the plan has now been re-drafted and published recently. No doubt, it is true that a private land also can be shown as a land reserved for public purpose in a Detailed Development Plan. As per the provisions of Tamil Nadu Town and Country Planning Act, 1971, when a private land is shown as reserved for public purpose, the concerned authorities have to acquire the land.

6. As per Section 37 of the Act, after the publication of the notice with regard to the preparation of a Detailed Development Plan for the development of area within the planning area, if the land of a private person is required or reserved or designated in such plan for a public purpose, the land reserved for public purpose can be acquired by following the provision of Act 30 of the 2013. Under Section 38 of the Act, if the acquisition is not done within 5 years from the date of publication of notice in the Tamil Nadu Government Gazette under Section 26 or 27 of the Act, such land shall be deemed to be released from such reservation, allotment or designation.

7. In the present case, it is not disputed that the Detailed Development Plan was prepared long back. Previously, the land was required to be acquired under the Central Act. Now the acquisition shall be under Act 30 of 2013. Section 38 of the Act also indicates that land acquisition should be done within three years (now it is stated to be five years after amendment) from the date of publication of the notice under Section 26 or 27 of the Act. Hence, as per the provisions of Tamil Nadu Town and Country Planning Act 1971, the petitioner's land, though, was reserved for a public purpose as per the Detailed Development Plan, such reservation is deemed to be released, as the land is not acquired within the statutory period.

8. The fourth respondent has filed a status report, pointing out some of the principles laid down by this Court in few precedents. The contention of the fourth respondent that the land reserved for public purpose cannot be used for some other purpose is



not applicable, when a development is proposed in a private patta land and not in an approved lay out. Except the status report, no other counter affidavit is filed by any of the respondents disputing the factual averments made in the affidavit filed in support of the petition with regard to the character of the land and the title in respect of the property in dispute.

9. Hence, this Writ Petition is allowed and the property measuring to an extent of 1 acre 65 cents in T.S.No.2424/32 in Thimmarayasamuthiram Village, Ward No.3, Srirangam, Trichy District is deemed to be released from any reservation in terms of Section 38 of Town and Country Planning Act and the respondents are directed to issue order releasing the property, namely, an extent of one acre 65 cents in T.S.No.2424/32 in Thimmarayasamuthiram Village, Ward No.3, Srirangam, Trichy District from the Detailed Development Plan. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Housing and Urban Development Department,
The Secretariat, Chennai.
2. The Director of Town and Country Planning,
No.807, Anna Salai, Chennai -02.
3. The District Collector,
Trichy District, Trichy.
4. The Member Secretary,
Trichy Local Planning Authority,
Corporation Office Building,
Kajamalai, Trichy.
5. The Commissioner,,
Trichy Corporation,
Bharathidasan Salai, Trichy.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-3969[F] dated 30/01/2020)
+1 CC to M/s.S.SAJI BINO, Advocate (SR-4117[F] dated 31/01/2020)

CMR

TE : 18/02/2020 : 5P/8C

W.P. (MD) No.1202 of 2020
29.01.2020