



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD)No.1485 of 2020

and

W.M.P. (MD) .No.1188 of 2020

WEB COPY

K.Arjuna Raja

... Petitioner

Vs

1.The Director of Town Planning,
O/o. the Director of Town Planning,
No.807 Anna Salai, Chennai-2.

2.The Deputy Director of Town Planning,
O/o. the Deputy Director of Town Planning,
Tirunelveli-5.

3.The Commissioner,
Sankarankovil Municipality,
Sankarankovil, Thenkasi.

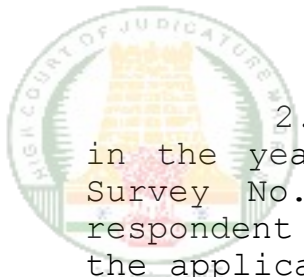
... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for records relating to the impugned order passed by the third respondent in his proceedings Ka.V.No.143/2017/F1, dated 14/09/2017 and quash the same as illegal and consequently to direct the third respondent to grant building plan permission in Survey No.239/1, No.398, Rajapalayam Road, Sankarankovil, Tenkasi District, treating the 'B1 B1' Railway Road Plan Scheme proposed Detailed Development Plan as lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35/1974) within the period that may be stipulated by this Hon'ble Court.

For Petitioner	: Mr.C.Venkatesh Kumar
	for M/s. Ajmal Associates
For R-1 & R-2	: Mrs.S.Srimathy
	Special Government Pleader
For R-3	: Mr.P.Mahendran

ORDER

Heard the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent / Municipality.



2.The petitioner had purchased the land in question wayback in the year 1966. He wanted to put up a commercial building in Survey No.239/1 in Sankarankovil, Tenkasi District. The third respondent is the competent Authority to sanction the plan. When the application dated 07.09.2017 was submitted, the third respondent returned the application on the ground that the site in question has been earmarked for the scheme road in the Railway Area Development Plan. This order returning the Application is put to challenge in this Writ Petition.

3.It is not in dispute that the detailed development plan was published in the Gazette some time in the year 1994. The petitioner states that the site in question was included in the said plan and earmarked for forming a scheme road. But then the Authority was bound to have taken steps for acquiring the land within three years. Such acquisition steps have not been taken. Therefore, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the land is deemed to have been released. Section 38 of the said Act reads as under:

"Section 38. Release of land

If within three years from the date of 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."

4.It has been held time and again that if no steps have been taken for acquiring the land within a period of three years after the land was earmarked for public purpose as per the notification, the property would be deemed to have been released from the reservation.

5.The petitioner's counsel draws my attention to the decision of this Court reported in **(2008) 2 MLJ 184-(K.S.Kamakshi Chetty and others Vs. Commissioner, Aruppukottai Municipality and another)** in this regard.

6.I am of the view that the case on hand is squarely covered by the aforesaid decision. The reason set out in the impugned order is not clearly sustainable in law. Therefore, the order impugned in this Writ Petition is quashed. The third



respondent is directed to consider the petitioner's application on merits and as per law as expeditiously as possible.

7.The Writ Petition is allowed on these terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// 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 Planning,
O/o. the Director of Town Planning,
No.807 Anna Salai, Chennai-2.
- 2.The Deputy Director of Town Planning,
O/o. the Deputy Director of Town Planning,
Tirunelveli-5.

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SMA/16/07/2020/3P/3C