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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.11.2020**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.16410 of 2020

(Through Video Conference)

Victoria Joseph ... Petitioner

Vs

1) The Principal Secretary,
Housing and Urban Development Department,
St.George Fort,
Secretariat, Chennai 600 009

2) The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai 600 002

3) The Member Secretary,
Thanjavur Local Planning Authority,
A-2, 7th Street, Arulananda Nagar,
Thanjavur – 613 007 ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent nos.1 to 3 to release the petitioner's land with an extent of 1 Hectare 24 Ares in Survey Numbers:133/2A and 133/2B situated in Nilagiri Therku Thottam Village, Thanjavur Taluk, Thanjavur District earmarked for the "Proposed 100 feet ring road in the Thanjavur Master Plan" by treating the "Proposed 100 feet ring road in the Thanjavur Master Plan" as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 within a stipulated time that may be fixed by this Court.

For Petitioner : Mr.R.Karunanidhi
For Respondents : Ms.M.Rajeswari,
Government Advocate

O R D E R

Ms.M.Rajeswari, learned Government Advocate accepts notice for respondents. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.

2. This Writ Petition has been filed seeking for a Mandamus, to direct the respondent nos.1 to 3 to release the petitioner's land with an extent of 1 Hectare 24 Ares in Survey Numbers:133/2A and 133/2B situated in Nilagiri Therku Thottam Village, Thanjavur Taluk, Thanjavur District earmarked for the "Proposed 100 feet ring road in the Thanjavur Master Plan" by treating the "Proposed 100 feet ring road in the Thanjavur Master Plan" as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 within a stipulated time that may be fixed by this Court.

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3. It is the case of the petitioner that she has been in

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enjoyment of the properties measuring an extent of 1 Hectare 23 Ares in Survey Number:133/2A and 2 Ares in Survey Number 133/2B situated in Nilagiri Therku Thottam Village, Thanjavur Taluk, Thanjavur District and she has also got patta, bearing patta no.2014 from the Revenue Department for the aforementioned land properties situated in Survey No.133/2A, 133/2B, 134/2A, 134/2B, 134/4A and 134/4B. It is also submitted by the learned counsel for the petitioner that the petitioner's land situated in Survey Nos.133/2A and 133/2B have been earmarked for the "Proposed 100 feet ring road in the Thanjavur Master Plan" in the year 1995 and the third respondent office had initiated proceedings and the first respondent had approved the same and published it in the official Gazette vide G.O.Ms.No.696 dated 09.08.1995 for 100 feet ring road in the Master Plan Scheme Road.

4. Since no steps have been taken for acquisition, according to the petitioner, under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the proposal for "Proposed 100 feet ring road in the Thanjavur Master Plan" made by the respondents is now lapsed. Therefore, the petitioner has filed the present Writ Petition seeking for the release of her lands situated in Nilagiri Therku Thottam Village, Thanjavur Taluk, Thanjavur District earmarked for the "Proposed 100 feet ring road in the Thanjavur Master Plan". The petitioner has also submitted a representation to the second respondent office on 07.08.2020 requesting for the lease of the petitioner's property for getting approval. Till date, the said representation of the petitioner has not been considered by the respondents. In such circumstances, this writ petition has been filed.

5. Ms.M.Rajeswari, learned Government Advocate appearing for the respondents, on instructions, agreed with the submissions made by the learned counsel for the petitioner.

6. Heard Mr.R.Karunanidhi, learned counsel appearing for the petitioner and Ms.M.Rajeswari, learned Government Advocate appearing for the respondents.

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

> *"Section 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 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."*

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8. As seen from Section 38, it is clear that if within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under Sections 26 or 27 of the Act, no declaration as provided in sub-section (2) of Section 37 is published in respect of any land specified for Detailed Development Plan or such land is not acquired by agreement, the land shall be deemed to be released from such reservation, allotment or designation.

9. In the instant case on hand, the third respondent office has earmarked and initiated proceedings and the first respondent had approved the same and had published in official Gazette vide G.O.Ms.No.696 dated 09.08.1995 for 100 feet ring road in the Master Plan Scheme Road. Later, the first respondent office has passed a Government Order in G.o.(2D) No.03 dated 11.01.2017 and released the nearby lands of the petitioner which are situated in Survey numbers 221/17, 223/1, 223/3. 234/2A, 234/8, 235/16 and 238/29. Till date, there is no further progress or development has taken place in this regard.

10. After hearing the submissions made by the learned Government Advocate, it is seen that no steps have been taken for acquisition of the lands from the petitioner. Section 38 of the Act makes it clear that if no steps have been taken for acquisition of the lands within three years from the date of the publication of the notification in the Tamil Nadu Government Gazatte under Sections 26 or 27 of the Act, the land shall be deemed to be released from such reservation, allotment or designation.

11. The learned counsel for the petitioner drew the attention of this Court to the following authorities in support of the Writ Petition:-

1.***The Commissioner Aruppukottai Municipality Vs. Kamakshi Shelty*** reported in ***2011 (8) MLJ 437*** in the Hon'ble Division Bench of this Court.

2. ***A.Raja Vs. The Director of Town and Country Planning and others*** in ***W.P.(MD).No.15350 of 2016*** dated ***30.11.2016*** in the Madras High Court.

3.***V.Nagamani and another Vs. Director of Town and Country Planning, Chennai and others*** reported in ***(2010) 2 MLJ 688*** in the Madurai Bench of Madras High Court.

12. In all the aforesaid Judgments, the Hon'ble Division Bench of this Court as well as the learned Single Judges of this Court have held following Section 38 of the Tamil Nadu Town and Country Planning Act that once no steps have been taken by the respondents within three years from the date of notification under Sections 26 or 27 of the Act, the land shall be deemed to released from such reservation, allotment or designation. In the case on hand, admittedly no steps have been taken to acquire the lands belonging

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to the petitioner, within a period of three years from the date of notification under Sections 26 or 27 of the Act. It is also submitted that pursuant to the proposal for a "Proposed 100 feet ring road in the Thanjavur Master Plan" by the respondents, the adjourning lands have also not been acquired.

13. In the light of the above observations, Section 38 of the Tamil Nadu Town and Country Planning Act is attracted and this Court is in agreement with the view taken by the Division Bench of this Court as well as the learned Single Judges of this Court referred to *supra* and comes to the conclusion that the subject lands should be released to the petitioner.

14. In the result, the respondents are directed to release the petitioner's land measuring an extent of 1 Hectare 24 Ares in Survey Numbers:133/2A and 133/2B situated in Nilagiri Therku Thottam Village, Thanjavur Taluk, Thanjavur District under the "Proposed 100 feet ring road in the Thanjavur Master Plan" to the petitioner, as the proposal to acquire the said lands have been lapsed by virtue of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

15. With the aforesaid direction, this Writ Petition stands disposed of. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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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 Principal Secretary,
Housing and Urban Development Department,
St.George Fort, Secretariat, Chennai 600 009
2) The Director,
Town and Country Planning,
No.807, Anna Salai, Chennai 600 002
3) The Member Secretary,
Thanjavur Local Planning Authority,
A-2, 7th Street, Arulananda Nagar, Thanjavur – 613 007.

+1 CC to M/s.R. KARUNANIDHI, Advocate (SR-22754[F] dated 24/11/2020

W.P.(MD)No.16410 of 2020
20.11.2020

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