



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.17979 of 2020
(Through Video Conference)

WEB COPY

S.H.Rafic

... Petitioner

Vs.

1.The Director,
Town and Country Planning,
No.807, Annasalai,
Chennai-600 002.

2.The Member Secretary,
Thanjavur Local Planning Authority,
A2, 7th Street, Arulanantha Nagar,
Thanjavur, 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 and 2 to release the petitioner's land with an extent of 2512 ½ Sq.feet in Old Survey No.2851/55 and New Survey No.46/3, situated at Nanjikottai Village, Thanjavur District earmarked for the "Nanjikottai Detailed Development Plan No.1" by treating the "Nanjikottai Detailed Development Plan No.1" as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.C.Ramesh,
Special Government Pleader

O R D E R

This writ petition has been filed for a Mandamus seeking for a direction to the respondent Nos.1 and 2 to release the petitioner's land with an extent of 2512 ½ Sq.feet in Old Survey No.2851/55 and New Survey No.46/3, situated at Nanjikottai Village, Thanjavur District earmarked for the "Nanjikottai Detailed Development Plan No.1" by treating the "Nanjikottai Detailed Development Plan No.1" as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

2. Mr.C.Ramesh learned Special Government Pleader, accepts notice on behalf of the respondents. By consent of both parties, the Writ Petition is taken up for final disposal at the admission stage itself.



3. Heard Mr.R.Karunanidhi, learned counsel appearing for the petitioner and Mr.C.Ramesh, learned Special Government Pleader appearing for the respondents.

4. Section 38 of 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.

5. Section 38 of the Tamil Nadu Town and Country Planning Act 1971, has been considered by various Benches of this Court which includes the following:

(1) **The Director, Town and Country Planning, Chennai and another vs M.Dasarathan and another**, in W.A(MD)No.754 of 2019.

(2) **The Director, Town and Country Planning, Chennai and another vs P.Babu**, in W.A(MD)No.447 of 2020.

(3) **A.Bhaskaran vs The Director of Town and Country Planning, Chennai and others**, in W.P.(MD)No.13645 of 2017 (passed by me).

6. In all the aforementioned judgments, it has been consistently held that if the lands are not acquired within a period of three years from the date of publication of notice in the Government Gazette regarding preparation of regional plan or master plan or detailed development plan, etc, as the case may be, the lands shall deem to be released from the reservation.

7. In the case on hand, the publication was effected on 13.04.2005. Admittedly, the subject lands have not been acquired within a period of three years from the date of effecting publication. In view of the same, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 and also as per the judgments referred to supra, the lands shall be deemed to be released from reservation.

8. Since the subject lands have not been acquired within a period of three years from the date of effecting publication in the Government Gazette, the contention of the respondents will have to



be necessarily rejected by this Court, as the lands are deemed to be released for reservation as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

9. For the foregoing reasons, this Court directs the respondent Nos.1 and 2 to release the petitioner's land measuring to an extent of 2512 ½ Sq.feet in Old Survey No.2851/55 and New Survey No.46/3, situated at Nanjikottai Village, Thanjavur District, earmarked for the "Nanjikottai Detailed Development Plan No.1" by treating the "Nanjikottai Detailed Development Plan No.1" as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

10. Accordingly, this Writ Petition is allowed. However, there is no order as to costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

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 Director,
Town and Country Planning,
No.807, Anna salai,
Chennai-600 002.
- 2.The Member Secretary,
Thanjavur Local Planning Authority,
A2, 7th Street, Arulanantha Nagar,
Thanjavur, Thanjavur-613 007.

+1cc to Mr.R.Karunanidhi, Advocate Sr.No.25011
+1cc to Special Government Pleader Sr.No.24885

Order made in
W.P. (MD)No.17979 of 2020

Dated:
09.12.2020

TP (CO)

NR (18/01/2020) 3P : 5C

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