



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.19009 of 2020

(Through Video Conference)

WEB COPY

1.P.Raja
2.A.James

... Petitioners

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 petitioners' land with an extent of 2 Acres and 16 Cents in Survey Numbers:232/1A2 and 232/2A2 situated in Puliyanthoppu 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.

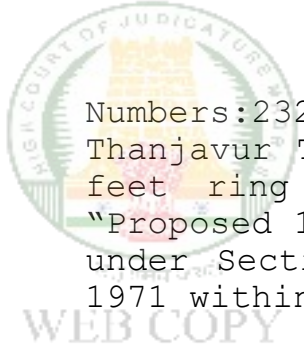
For Petitioners : Mr.R.Karunanidhi

For Respondents : Mr.A.Muthu karuppan
Additional Government Pleader

O R D E R

Mr.A.Muthu karuppan learned Additional Government Pleader 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 <https://hcservices.ecourts.gov.in/hcservices/> direct the respondent nos.1 to 3 to release the petitioners' land measuring an extent of 2 Acres and 16 Cents in Survey



Numbers:232/1A2 and 232/2A2 situated in Puliyanthoppu 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.

3. It is the case of the petitioners that they have been in enjoyment of the properties measuring an extent of 2 acres, 16 cents in Survey Number:232/1A2 and 84 Hectares and 21 Ares in Survey Number 232/2A2 situated in Puliyanthoppu Village, Thanjavur Taluk, Thanjavur District and they have also got patta, bearing patta Nos.3241 & 3242 from the Revenue Department for the aforementioned land properties. It is also submitted by the learned counsel for the petitioners that the petitioners' land situated in Survey Nos.232/1A2 and 232/2A2 were 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 petitioners, 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 petitioners has filed the present Writ Petition seeking for the release of their lands situated in Puliyanthoppu Village, Thanjavur Taluk, Thanjavur District, earmarked for the "Proposed 100 feet ring road in the Thanjavur Master Plan". The petitioners have also submitted a representation to the second respondent office on 24.11.2020 requesting for the release of the petitioners' property for getting approval. Till date, the said representation of the petitioners has not been considered by the respondents. In such circumstances, this writ petition has been filed.

5. Mr.A.Muthu karuppan learned Additional Government Pleader 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 petitioners and Mr.A.Muthu karuppan learned Additional Government Pleader 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 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."

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 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 petitioners 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 that has taken place in this regard.

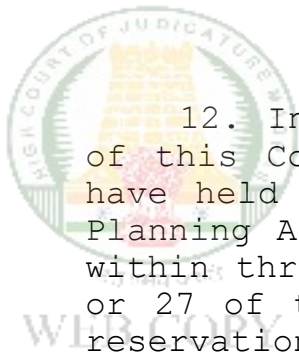
10. After hearing the submissions made by the learned Additional Government Pleader, it is seen that no steps have been taken for acquisition of the lands from the petitioners. Section 38 of the Act makes it clear that if no steps have been taken for acquisition of the lands within three years from the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

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

1. The Commissioner Aruppukottai Municipality Vs. Kamakshi Shetty 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 be released from such reservation. In the case on hand, admittedly no steps have been taken to acquire the lands belonging to the petitioners, 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 adjoining lands have been released from acquisition.

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 in favour of the petitioner.

14. In the result, the respondents are directed to release the petitioners' land measuring an extent of 2 Acres and 16 Cents in Survey Numbers:232/1A2 and 232/2A2 situated in Puliyanthoppu Village, Thanjavur Taluk, Thanjavur District under the "Proposed 100 feet ring road in the Thanjavur Master Plan" forthwith to the petitioners, 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 (A.E)

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/ /2021

Sub Assistant Registrar(CS)

TM

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,
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No.807, Anna Salai,
Chennai 600 002.

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

+1cc to the Spl GP SR.No.27058.

Order made in
W.P. (MD) No.19009 of 2020

Dated:
22.12.2020

SGS (CO)
CS(06.01.2021) 5P 5C