



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2020

CORAM:

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P (MD) NO.26226 OF 2019

and

W.M.P (MD) Nos.22651 and 22652 of 2019

B.Sumathi

:Petitioner

.vs.

The Member Secretary,
Madurai Local Planning Authority,
Third Floor, Madurai Corporation,
Madurai.

: Respondent

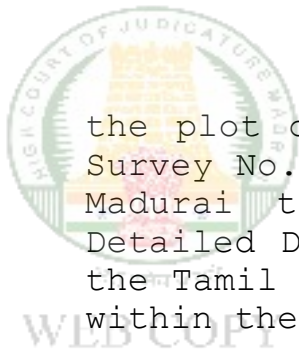
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No.1415/2018/Mathi.2, dated 25.5.2018 and quash the same as illegal and consequently to direct the respondent to regularize the plot of the Petitioner comprised in Re-Survey No.212/1, UDR Survey No.71/1 in Plot NO.122, Meenakshi Amman Nagar, Surya Nagar, Madurai treating the Sirudur 'BB' Plan Road Scheme proposed Detailed Development Plan as lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TNAct 35/1974) within the period stipulated by this Court.

For Petitioner : Mr.Mohammed Suhail
for M/s.Ajmal Associates

For Respondent : Mrs.J.Padmavathi Devi
Special Govt.Pleader

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings in Na.Ka.No.1415/2018/Mathi.2, dated 25.5.2018 and quash the same as illegal and consequently to direct the respondent to regularize



the plot of the Petitioner comprised in Re-Survey No.212/1, UDR Survey No.71/1 in Plot NO.122, Meenakshi Amman Nagar, Surya Nagar, Madurai treating the Sirudur 'BB' Plan Road Scheme proposed Detailed Development Plan as lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971(TN Act 35/1974) within the period stipulated by this Court.

2.The Petitioner had purchased the land through a registered sale deed on 7.11.2013 in R.S.No.212/1 in Plot No.122, Meenakshi Amman Nagar, Surya Nagar, Madurai District. When she proposed to construct a dwelling house, it was realized that it was an unapproved lay-out. Therefore she applied to the respondent for regularization of her plot for construction of a house in the said plot. However, the respondent has passed an order by proceedings dated 25.5.2018 stating that the Plot belonging to the Petitioner is forming part of 'BB' Plan Road Scheme Proposed Detailed Development Plan and as such, the approval cannot be granted. The said impugned order is now under challenge in this Writ Petition.

3.The learned counsel for the respondent has also filed his counter affidavit.

4.The learned counsel for the Petitioner submits that the respondent had not initiated any proceedings and acquired the land of the Petitioner under Section 37 of the Town and Country Planning Act, 1971 within the period of three years and therefore, the proposal is deemed to have lapsed.

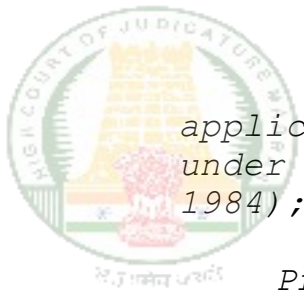
5.In the counter affidavit, it is stated that the Petitioner's land is lying in the 'BB' Plan Road Scheme covered under the Proposed Detailed Development Plan. Therefore, regularization as requested by the Petitioner is not possible.

6.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7.Section 37 and 38 of the Town and Country Planning Act reads as under:

'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 acquired, 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, 1984 (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 (I), 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 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 situated, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of the 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 the publication of the notice in the Tamil Nadu Gazette under Section 26 or Section 27, as the case may be;

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



reservation, allotment or designation.''

8.As per Section 38 of the above Act, if any property is not utilized as per the notification and no steps having been taken by the authority to acquire the said property within the period of three years, the property is deemed to have been released from such reservation. Hence the respondent cannot reject the plan submitted by the Petitioner for regularization of the scheme. Even in the counter filed by the respondent, it is not stated by the respondent that any steps have been taken for acquisition of the Petitioner's land.

9.In similar circumstances, in W.P(MD)No.4775 of 2018, this Court had an occasion to deal with this subject-matter. In the said case also, the land involved was for Sirudhur Detailed Development Part-I. However, the acquisition proceedings were not completed within the stipulated period of three years. Hence the reservation made under the Detailed Development Plan lapsed by operation of Section 38(2) of the Town and Country Planning Act. In the present case also, in view of the specific stand taken by the respondent that there is no acquisition proceedings as per Section 38 of the Act and also in view of the consistent stand taken by this Court in umpteen number of cases, the Petitioner is entitled to succeed in this Writ petition.

10.In the result, this Writ Petition is allowed and the respondent is directed to regularize the unapproved plan of the Petitioner in respect of the subject-matter land, in terms of G.O.Ms.No.78, Housing and Urban Development(UD4(3)) Department, dated 4.5.2017 within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Crl Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsn

To

The Member Secretary,
Madurai Local Planning Authority,
Third Floor, Madurai Corporation,
Madurai.

<https://hcservices.courts.gov.in/hcservices/>



+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-2910[F] dated 24/01/2020)

+1 CC to M/s.SPL.GP (SR-3154[F] dated 27/01/2020)

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ORDER MADE IN
W.P (MD) NO.26226 OF 2019
and
W.M.P (MD) Nos.22651 and
22652 of 2019

24.01.2020

dks (CO)
TR(10.02.2020) 5P 4C