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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.08.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

WP.NO.13049 OF 2008 AND

MP.NOS.2 & 3 OF 2008

S.Dhanalakshmi

Vs

... Petitioner

1.State of Tamilnadu,
rep. by the Secretary to Government,
Housing & Urban Development Department,
Chief Secretariat, Chennai 600 009

2.The Commissioner / Director of Town &
Country Planning,
807, Anna Salai, Chennai 600 002

3.The District Collector-cum-Chairman
of the Salem Local Planning Authority,
Collectorate,
Salem 636 001

4.Joint Director of Town & Country Planning
and Member Secretary,
Salem Local Planning Authority,
Nedunchalai Nagar, Salem 636 005

5.The Commissioner,
Salem Municipal Corporation,
Salem 636 001

... Respondents

Prayer :-

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the second respondent relating to the order and notification bearing Roc.No.31604/2004 DP-1, dated 12.09.2006 published in the T.N.Govt Gazettee No.38 dated 27.09.2006, and first respondent order and notification bearing Roc.No.14607/2007/DP-1 dated 31.03.2008 on the file of the second respondent and quash the same.



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For Petitioner : Mr.T.P.Manoharan,
Senior Counsel
for Mr.K.P.Jyotheshwaran

For Respondents

For R1 to 3 : Mr.M.R.Gokul Krishnan,
Government Advocate

For R4 : Mr.M.Elumalai

For R5 : No appearance

ORDER

This Writ Petition is filed to issue a writ of certiorari calling for the records of the second respondent relating to the order and notification bearing Roc.No.31604/2004 DP-1, dated 12.09.2006 published in the T.N.Govt Gazettee No.38 dated 27.09.2006, and order and notification bearing Roc.No.14607/2007/DP-1 dated 31.03.2008 on the file of the second respondent and quash the same.

2. The case of the petitioner is that Aravankadu area consisting of 164 acres of agricultural lands, is situated adjacent to the Salem Town. The owners of those agricultural lands have converted the same into residential plots by way of layouts and the same was approved by the planning authority. Thereafter, all the plots were sold out to various third persons. The purchasers also constructed houses in their respective plots. Therefore, the entire area already has been developed as residential area in accordance with the provisions contained in Tamilnadu Town and Country Planning Act, 1971 (hereinafter called as TNT & CP Act) and renamed as Sankar Nagar. Therefore, there is absolutely no need or necessity to once again develop such a developed area by way of preparing a development plan either under Tamilnadu Town Planning Act, 1920 or now under the Tamilnadu Town and Country Planning Act, 1971. While being so, the fifth respondent herein prepared a development plan for such developed area in the name of Periyeri Town Planning Scheme by GO.Ms.No.2467, R.D. & L.A. Dept dated 15.12.1969. The first respondent sanctioned the said scheme as contemplated under Section 14 (3) of the Tamilnadu Town Planning Act, 1920 and published the same in the Government Gazette on 21.01.1970.

2.1 In the said scheme, a portion of the road was contemplated admeasuring 1452 sq.ft. owned by one, Periyanna



Gounder. After such publication, old act was repealed and new Act has been enacted. The respondents realised that it has been already developed and abandoned the scheme, not proceeded with further, such as acquisition of land, allotted or designated therein and not published the declaration under Section 37(2) of the TNT & CP Act, 1971, within a period of three years from the date of publication. Therefore, all the house sites were released from the scheme, since the scheme itself had lapsed, not in legal existence, non-est and become dead as early as on 20.01.1973. As such, all the owners are entitled to develop and use their respective house sites according to their convenience. Accordingly, the said Periyanna Gounder was entitled to deal with his house site bearing TS.No.4/2A2, since it was also released from the scheme. Hence, he sold out the said house site in favour of one K.P.Ramasamy and others by the sale deed dated 25.04.1984. In turn, they sold out the same in favour of one, Periyannan by another sale deed. The said Periyannan had sold the house site to one, Balakrishnan. The petitioner with bonafide intention, purchased the house site admeasuring 1452 sq.ft from the said Balakrishnan by registered sale deed dated 25.09.2006 for valuable sale consideration. Thereafter, after obtaining the building plan from the fifth respondent and constructed house with one borewell. The said house was also assessed to the property tax and also obtained electricity service connection and the petitioner is living there.

2.2 While being so, the third respondent has ignored the above facts, position of law and procedures, and made a proposal for variation of the lapsed and dead Periyeri Town Planning Scheme in the name of the Periyeri Detailed Development Plan and submitted before the second respondent for his approval and made publication in the Gazette. The second respondent also without applying his mind conducted enquiry, approved the said variation and issued variation notification under Section 33 (1) of the TNT & CP Act, 1971. It was also published in the notification dated 27.09.2006. The fourth respondent published the said notification in Salem District Gazette on 24.01.2007. Thereafter, the second respondent passed order on 31.03.2008 accepting the request made by the fourth respondent and confirmed the variation notification issued under Section 33 (2) of the TNT & CP Act, 1971 and issued notification. The above orders and notifications are arbitrary, unwarranted, illegal and contrary to the object, purpose and provisions of the TNT & CP Act, 1971 and Rules.

3. Per contra, the fourth respondent filed counter and denied all the allegations generally. Further stated that Town Planning Scheme is under implementation. Change of scheme is permitted under Section 33 (1) of TNT & CP Act, 1971 and there is provision to make sure about the implementation of the scheme



under Section 33 (2) of the said Act. Till such time, the scheme already sanctioned will be in force. Before making such variation, the owners of the houses and house sites in the area are consulted as required under Section 21 of the TNT & CP Act, 1971 and the procedures were strictly followed as required under the Preparation and Sanction of Detailed Development Plan Rules. Therefore, he prayed for dismissal of the writ petition.

4. The learned Senior Counsel appearing for the petitioners submitted that the impugned orders and notifications are arbitrary, unjust, unfair, unwarranted, contrary to the object, purpose and provisions of TNT & CP Act, 1971 and Rules. It violates Article 14 and 300-A of the Constitution of India. In view of Section 33 (1) of the TNT & CP Act, 1971, the respondents can very well vary or modify only a town planning scheme, while is alive, in legal existence and in force as on the date of such variation or modification. They cannot vary or modify the town planning scheme which had already lapsed, dead or not in legal existence, indirectly give life to it and seek to implement the same. He further submitted that Periyeri Town Planning Scheme proposed by the respondents in the year 1969 already lapsed as on 20.01.1973. Therefore, after 35 years, the respondents cannot invoke Section 33 (1) of the TNT & CP Act, 1971 and vary such lapsed and dead scheme. The Aravankadu area in Salem has already been developed as a pucca residential area in accordance with the provisions contained under the TNT & CP Act, 1971 and renamed as Sankar Nagar in the year 1969 itself. Therefore, there is no need or necessity to once again develop such a developed area by way of preparing the development plan under Section 17 to 31 of the TNT & CP Act, 1971. Even before making variation in the scheme, the third respondent is duty bound to consult the owners of the houses and house sites in the area as required under Section 21 of the TNT & CP Act, 1971 and strictly follow the procedures and issue required notice prescribed under the Rules. However, the third respondent failed to do so and as such the entire impugned proceedings are vitiated and liable to be quashed.

4.1 He further submitted that the fourth respondent filed counter with bereft of facts. There is no specific denial by the fourth respondent with regards to the averments made in the affidavit filed in support of the writ petition. There must be specific denial for each and every averments in the affidavit. As per Section 58 of the Evidence Act, when the facts are admitted, need not be proved. Even as per the counter filed by the respondent concerned, there is no specific denial and it amounts to the respondent concerned admitted the fact. In support of his contention he relied upon the judgment in the case of Asha Vs. PT.B.D.Sharma University of Health Sciences and Others reported in (2012) 7 SCC 389, wherein it is held as



follows:

It is a settled principle of the law of pleadings that an averment made by the appellant is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the respondent. In the present case, it is evident that the above-noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the appellant hinged on these three paragraphs of the writ petition. It was thus, expected of the respondents to reply these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on part of the respondents to refer to any relevant records and failure to specifically deny the averments made by the appellant, we are of the considered view that the appellant has been able to make out a case for interference.

The Hon'ble Supreme Court of India held that what are all the averments made in the affidavit, is expected to be specifically denied by the replying party. If there is no specific denial, then such averment is deemed to have been admitted by the respondent.

4.2 The learned Senior Counsel also relied upon the following judgments in support of his contention:

- (i) Raju S.Jethmalani & Ors Vs. State of Maharashtra and Ors reported in (2005) 11 SCC 222
- (ii) Pillaiyar P.K.V.K.N.Trust Vs. Karpaga N.N.U.S and Ors reported in (2010) 9 SCC 344
- (iii) Commissioner, Aruppukottai Municipality Vs. K.S.Kamakshi Chetty & Others reported in (2011) 8 MLJ 437(DB)
- (iv) K.S.Kamakshi Chetty & Others Vs. Commissioner reported in (2008) 2 MLJ 184
- (v) Casa Granade Private Ltd Vs. Chennai Metropolitan Development Authority reported in (2007) 3 MLJ 647
- (vi) V.Nagamani & Another Vs. The Director of Town Country Planning, Chennai and others reported in 2010(2) CTC 510
- (vii) The Commissioner, Bhavani Municipality Vs. C.Ramasamy and ors reported in 2015(4) CTC 25
- (viii) Kunwar Pal Singh Vs. State of UP and others reported in (2007) 5 SCC 85
- (ix) State of Orissa & another Vs. Mamata Mohanty reported in (2011) 3 SCC 436



5. Heard, Mr.T.P.Manoharan, Senior Counsel appearing for the petitioner, Mr.M.R.Gokul Krishnan, Government Advocate appearing for the respondents 1 to 3, and Mr.M.Elumalai, the learned counsel for the fourth respondent.

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6. On perusal of the counter filed by the fourth respondent, except the general denial, there is no specific denial by the fourth respondent with regards to the averments made in the affidavit filed in support of the writ petition challenging the impugned notification.

7. The petitioner purchased the subject property by the sale deed dated 25.09.2006 as a house site admeasuring 1452 sq.ft. named as Sankar Nagar. The area called Aravankadu is situated adjacent to the Salem Town had been converted into house plots by the approved lay out even in the year 1960. The house plots were purchased by various parties and they have constructed their respective houses and named as Sankar Nagar. At that juncture, the fifth respondent herein prepared a development plan in the name of Periyeri Town Planning Scheme by the GO.Ms.No.2467 R.D & L.A. Dept dated 15.12.1969. The same was published in the Government Gazette on 21.01.1970. In the said scheme, a portion of the road was contemplated in the house site bearing TS.No.4/2A2 admeasuring 1452 sq.ft owned by one, Periyanna Gounder. The said property is now purchased by the petitioner. After the said publication, the Government of Tamilnadu repealed the Tamilnadu Town Planning Act, 1920 and enacted the present act i.e. TNT & CP Act, 1971. Even before the scheme called Periyeri Town Planning Scheme, the entire Aravankadu area was developed and renamed as Sankar Nagar. Thereafter, the respondents had abandoned the said scheme and not proceeded with, not taken any step to acquire the lands, allotted or designated therein and not published the declaration under Section 37(2) of the TNT & CP Act, 1971 within a period of three years from the date of the publication.

8. In view of the proviso to Section 37(2) of the TNT & CP Act, 1971, if no declaration required under Section 37(2) in respect of any particular land covered by a notice under Section 26 or 27 shall be made after the expiry of three years from the date of such notice. In view of Section 38 of TNT & CP Act, 1971, if within three years from the date of publication of the notice in the Tamilnadu Government Gazette under Section 26 or 27, no declaration under Section 37(2) is published in respect of any land reserved, allotted or designated for any purpose specified in the development plan or such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation. However, the same were not done. Therefore, all the house sites including the house site bearing TS.No.4/2A2, were released from the said scheme and



the said scheme itself had lapsed, non-est and become dead as early as on 20.01.1973.

9. In view of Section 33 (1) of TNT & CP Act, 1971, the respondents can vary or modify only town planning scheme which is alive, in legal existence and in force on the date of such variation or modification. They cannot vary or modify the town planning scheme which were already lapsed and not in legal existence. Therefore, the respondents cannot invoke Section 33 (1) of the TNT & CP Act, 1971 and vary such lapsed and dead scheme, that too after period of 35 years. In this regard, the learned Senior Counsel relied upon the judgment in the case of Raju S.Jethmalani & Ors Vs. State of Maharashtra and Ors reported in (2005) 11 SCC 222, wherein it is held as follows:

Therefore, the question is whether the Government can prepare a development plan and deprive the owner of the land from using that land ? There is no prohibition of including private land in a development plan but no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. We quite appreciate the interest of the residents of that area that for the benefit of the ecology, certain areas should be earmarked for garden and park so as to provide fresh air to the residents of that locality. In order to provide such amenities to the residents of the area private land can be acquired in order to effectuate their public purpose but without acquiring the private land the Government cannot deprive the owner of the land from using that land for residential purpose.

10. He also relied upon the judgment in the case of Pillaiyar P.K.V.K.N.Trust Vs. Karpaga N.N.U.S and Ors reported in (2010) 9 SCC 344, wherein it is held as follows:

25.The High Court then referred to the argument made that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation. The High Court has undoubtedly posed this question up to paragraph 16 but has chosen not to answer it till last. We, therefore, put the same question to the Counsel for the respondent as also to the Counsel for the



Government and both the Counsel fairly conceded that the land is still not acquired.

26. Section 38 of The Tamil Nadu Town & Country Planning Act, 1971 runs as under:-

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

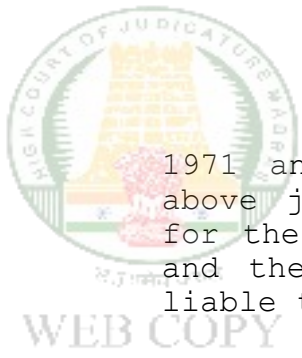
(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the concerned land would certainly be deemed to have been released.

28. The High Court has also referred to the reported decision in Raju S. Jethmalani & Ors. Vs. State of Maharashtra & Ors. [2005 (11) SCC 222], where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land.

The Hon'ble Supreme Court of India held that no development can be made on that land unless that private land is acquired for development. The Government cannot deprive the persons from using their private property. Without acquiring the private land, the Government cannot deprive the owner of the land from using that land for residential purpose. Further held that if the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation.

11. In the case on hand, the scheme of Periyeri Town Planning was already lapsed and dead and there was no acquisition. Therefore, the entire scheme itself had lapsed as early as on 20.01.1973. After period of 35 years, the respondents cannot invoke Section 33 (1) of the TNT & CP Act,



1971 and vary such a lapsed and dead scheme. Therefore, the above judgments cited by the learned Senior Counsel appearing for the petitioners are squarely applicable to the case on hand and the impugned proceedings initiated by the respondents are liable to be quashed.

12. Accordingly, the impugned proceedings are quashed and the writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

- 1.The Secretary to Government
State of Tamilnadu,
Housing & Urban Development Department,
Chief Secretariat, Chennai 600 009
- 2.The Commissioner / Director of Town &
Country Planning,
807, Anna Salai, Chennai 600 002
- 3.The District Collector-cum-Chairman
of the Salem Local Planning Authority,
Collectorate,
Salem 636 001
- 4.Joint Director of Town & Country Planning
and Member Secretary,
Salem Local Planning Authority,
Nedunchalai Nagar, Salem 636 005
- 5.The Commissioner,
Salem Municipal Corporation,
Salem 636 001

+1cc to the Government Pleader, S.R.No.42293

WP.No.13049 of 2008

BP(CO)
PM/22/09/2021