



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. Nos.19099 and 20932 of 2021

M/s.Confiance Business Solution
Rep. by its Partner
Chandramouli

.. Petitioner in
W.P.No.19099/2021

M/s.Bharat Electronics and Appliances,
Rep. by its Partner Raja Ravichandran

.. Petitioner in
W.P.No.20932/2021

Vs

1.The Director of Town & Country Planning,
Office of the Directorate of Town and Country Planning,
Second, Third and Fourth Floor,
E&C Market Road,
Koyambedu, Chennai 600 107.

2.The Member Secretary
Coimbatore Local Planning Authority,
Corporation Shopping Complex,
Nanjappa Road,
Coimbatore 18.

3.The Coimbatore Municipal Corporation
Rep. by its commissioner
Corporation Office,
Coimbatore 641 001

..Respondents in
both W.Ps.

Prayer in W.P.No.19099/2021: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare the reservation made in respect of the petitioner's land in Survey No.116/1A1A2, Kavundampalayam



Village, Coimbatore North Taluk, Coimbatore under the Koundampalayam detailed development plan No.12 of 1993 to have lapsed in light of Sec.38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and consequently direct the local body the 3rd respondent to entertain and grant approval for any development in such land.

Prayer in W.P.No.20932/2021: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Declaration to declare the reservation made in respect of the petitioner's land in Survey No.178/2C1B, Saravanapatti Village, Coimbatore North Taluk, Coimbatore under the Saravanapatti detailed development plan No.7 of 1993 to have lapsed in light of Sec.38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the decision of this Court in Kannabiran v. The Director of Town and Country Planning, W.P.(MD) No.8515 of 2021 dated 25.06.2021 and consequently direct the local body the 3rd respondent to entertain and grant approval for any development in such land.

For Petitioner : Mr.Mahaboob Athiff

For Respondents : Mr.A.Selvendran for R1 & R2
Government Advocate

Mr.S.Saravanan for R3
standing counsel

COMMON ORDER

The issue involved in both the writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. The petitioners have approached this Court seeking for the issue of a writ of declaration to declare the reservation that was made with respect to the property belonging to the petitioners under the Koundampalayam detailed development plan and Saravanapatti detailed development plan to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as 'the Act') and for a consequential direction to the respondent Corporation to grant approval for making development in the property.



3. Heard the learned counsel for the petitioners, learned Government Advocate appearing on behalf of the respondents 1 and 2 and the learned standing counsel for the third respondent.

WEB COPY

4. The case of the petitioner in W.P.No.19099 of 2021 is that the third respondent had prepared a detailed development plan under Section 27 of the Act in the year 1993 and it was approved under Section 29 of the Act. The Koundampalayam detailed development plan was also published by the second respondent. Thereafter further steps were not taken and the acquisition did not happen as contemplated under the Act. The case of the petitioner is that the development plan itself has lapsed by virtue of not being completed within three years from the date of the publication of the detailed development plan under Section 27 of the Act.

5. Insofar as the petitioner in W.P.No.20932 of 2021, the notice for preparation of the Saravanapatti detailed development plan was made in the year 1993 and it was also approved under Section 29 of the Act. The development plan was also published under Section 27 of the Act. Thereafter further steps were not taken and the acquisition did not happen as contemplated under the Act. The case of the petitioner is that the development plan itself has lapsed by virtue of not being completed within three years from the date of the publication of the detailed development plan under Section 27 of the Act.

6. The issue involved in both these writ petitions is covered by the earlier order passed by this Court in W.P.(MD) No.8515 of 2021. This Court disposed of the said writ petition by an order dated 25.06.2021 and the relevant portions in the order are extracted hereunder:

"4. The main issue that has been urged before this Court is that the detailed development plan has lapsed under Section 38 of the Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamilnadu Gazette.

5. It is not necessary for this Court to consider the entire scheme of the Act, since for the very same Kochadai detailed development scheme, a Division Bench of this Court in W.A.



WEB COPY

(MD) No.485/2020 has held that the scheme had lapsed by virtue of Section 38 of the Act. The relevant portions in the judgment are extracted hereunder:

"11.As rightly pointed out by the learned counsel appearing for the respondents/writ petitioners that the counter affidavit proceeds on the merits of the claim and in no way deal with deemed lapse and in the considered opinion of this Court, the learned Judge, on correct appreciation of facts and by applying the legal position as enumerated in the above said judgment, allowed the writ petition. This Court, on going through the reasons assigned in the impugned order, is of the considered view that there is no infirmity or error apparent on the face of the record for the reason assigned by the learned Single Judge for allowing the writ petition and finds that the writ appeal lacks merits.

12.It is also brought to the knowledge of this Court that the writ appeal filed by the official respondents in WA(MD) No.340 of 2020, against the order dated 27.02.2017 in W.P. (MD) No.14456 of 2014 was also dismissed on 02.03.2020."

6. This Court has consistently held that if the land has not been acquired within a period of three years from the date of publishing the detailed development plan in the Gazette, the concerned lands shall be deemed to be released from such reservation. It will be beneficial to provide the details of the cases, wherein this Court had reached such a conclusion:

1.M.Amsavalli v. Director of Town and Country Planning reported in (2017) 2 CWC 418.

2. RM.Shanmuganathan v. Director of Town and Country Planning reported in (2018) 2 CWC 20;

3. W.P.(MD) No.5652 of 2019 (LKS Mohammed Meera Mohaideen v. Director of Town and Country planning ;

4.W.A(MD) No.485 of 2020 (The Director of Town and Country Planning and another v.



WEB COPY

Muthu and others) and

5. W.P.(MD) No.166 of 2021 (Nagendran v. The Director of Town and Country Planning).

7. In the present case, the detailed development plan was notified under Section 31 of the Act in the year 2006. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.

8. In the result, the property belonging to the petitioner has to be released from the Kochadai detailed development plan scheme, since it has lapsed under Section 38 of the Act. Accordingly, this writ petition is allowed. No costs."

7. When the above order was passed, this Court took into consideration the earlier orders passed in matters arising out of the very same issue. The above order will squarely apply to the facts of the present cases also. In view of the above, it is declared that the reservation made for the Koundampalayam detailed development plan and Saravanapatti detailed development plan with respect of the properties belonging to the petitioners has lapsed in the light of Section 38 of the Act and the same shall be released from the development plan scheme. Insofar as the consequential reliefs sought for by the petitioners, it is left open to the petitioners to make necessary application by producing all the relevant materials and the same shall be independently considered by the third respondent and a decision shall be taken in accordance with law.

8. In the result, the writ petitions are allowed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

RR



1.The Director of Town & Country Planning,
Office of the Directorate of Town and Country Planning,
Second, Third and Fourth Floor,
E&C Market Road,
Koyambedu, Chennai 600 107.

2.The Member Secretary
Coimbatore Local Planning Authority,
Corporation Shopping Complex,
Nanjappa Road,
Coimbatore 18.

3.The commissioner
The Coimbatore Municipal Corporation
Corporation Office,
Coimbatore 641 001

+2cc to Mr.S.Saravanan, Advocate, S.R.No.50679, 50677
+1cc to the Government Pleader, S.R.No.51299,51298

W.P.Nos.19099 and 20932 of 2021

PA(CO)
SB(18/10/2021)