

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 17753 of 2020

S.Rathna Devi

...Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2. The Director,
Town and Country Planning,
Chennai - 600 002.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of mandamus, directing the respondents to forthwith release the petitioners lands comprised in Survey Nos. 90/2, 95/2 Part, 95/3 Part situate at Pazhavanthakkattalai Village, Kumbakonam Taluk pursuant to the orders of the 1st respondent in proceedings bearing Letter No.25672/UD-5/2019-2 dated 22.05.2020 without seeking any further opinion from the 2nd respondent as set out in the letter bearing No.25672/UD-5/2019-4 dated 19.10.2020 issued by the first respondent.

For Petitioner : Mr.V.Nandha Kumar

For Respondents : Mr.Annai Ezhil,
Govt. Advocate

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O R D E R

This writ petition is filed for a mandamus directing the respondents to release the petitioners' land comprised in Survey Nos. 90/2, 95/2 Part, 95/3 Part situate at Pazhavanthakkattalai Village, Kumbakonam Taluk.

2. The case of the petitioner is that he is the owner of the lands comprised in aforesaid survey numbers to an extent of 7

acres and 45 cents. The second respondent by a proceedings in May 2017 proposed to acquire the petitioners' patta land as open-space reservation(OSR). The notice for the proposed acquisition was related to the year 1998 and the acquisition was not carried out and therefore, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, such land was deemed to be released from such acquisition.

3. The petitioner sent a representation dated 20.07.2016 and the same was rejected by the 2nd respondent by his letter dated 03.12.2019. As against the decision of the 2nd respondent, the petitioner had preferred a statutory appeal to the first respondent under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971. According to the petitioner, by order bearing reference number Letter No.25672/UD-5/2019-2 dated 22.05.2020, the first respondent allowed the appeal as follows:-

"The appeal committee was also informed that detailed development plan (DDP) for Tanjore has not been approved during 1998. the officials of the Director of Town & Country Planning also informed that the OSR area reserved under the DDP has not yet been acquired for the said purpose. The appeal committee deliberated the issue in details and allow the appeal"

whereas the petitioner was asked to appear again before the appeal committee on 28.09.2020 and recorded a further proceedings directing the 2nd respondent to obtain a legal opinion under the provision of Town and Country Planning Act. The first respondent after allowing the appeal has no jurisdiction or authority to review his own order to pass a further order seeking for a legal opinion.

4. The learned counsel for the petitioner made his submissions by referring the provisions under Section 37 and 38 of the Tamil Nadu Town and Country Planning Act and also relied on the similar orders passed by this Court.

5. Heard Mr.V.Nandhakumar, learned counsel for the petitioner.

6. The respondents have acquired the petitioner land as per the Detailed Development Plan (DDP) of the year 1998. Admittedly, the respondents pursuant to the notification issued in 1998, have not taken any steps for acquiring the lands under Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 and therefore, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the lands are deemed to be released. Section 37 and 38 of the Tamil Nadu Town and Country Planning Act extracted 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 required, 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, 1894 (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 subsection (1), 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 Government 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 situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that 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 publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

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."

7. As per the Section 38 of the Tamil Nadu Town and Country Planning Act, this Court has passed several orders as the lands are deemed to be released, the relevant operative portions of the orders are as follows:-

i) W.P.No. 21048 of 2010 dated 02.12.2016 in S.Anand Vs. The Secretary, Housing and Urban Development Department and others reported in MANU/TN/3335/2016

"19. Thereafter, in W.P(MD).No. 5221 of 2009 cited supra this Court after following the aforesaid two judgments i.e., MANU/TN/0205/2008: 2008(2)MLJ 184, and 2008 (8) MLJ 994 has given its findings which reads as follows:

"Therefore, having regard to the fact that no steps have been taken by the respondents as provided in that Act, either to acquire the land or make publication within three years from the date of initial notification. As per the deeming provision of Section 38, the lands are deemed to have been released from the acquisition and hence, the respondent cannot reject the approval on the ground that the land has been included in the 100 Feet AA Road Scheme."

ii) W.P(MD) No.26226 of 2019 dated 24.01.2020 in B.Sumathi Vs. The Member Secretary, Madurai Local Planning Authority reported in MANU/TN/0568/2020:-

"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."

iii) W.P(MD) No.1202 of 2020 dated 29.01.2020 in Thamizh Constructions (P) Limited., Vs. The Secretary to Government, Housing and Urban Development Department and others reported in MANU/TN/1083/2020:-

"5. In the present case, the Detailed Development Plan stated to be prepared long back, had not come into effect by developing the entire area as per the Detailed Development Plan. The respondents have not produced before this Court, the Detailed Development Plan or the particulars regarding the preparation and approval and publication of the plan within three years to contend that the plan has now been redrafted and published recently no doubt, it is true that a private land also can be shown as a land reserved for public purpose in a Detailed Development Plan. As per the provisions of Tamil Nadu Town and Country Planning Act, 1971, when a private land is shown as reserved for public purpose, the concerned authorities have to acquire the land."

iv) W.P(MD)No. 8552 of 2020 dated 09.10.2020 in K.Jeyaraman Vs. The Director, Town and Country Planning and others reported in MANU/TN/5600/2020:-

"8. Since the 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."

8. Considering the relevant provisions, it appears that the first respondent has also passed an order in bearing reference number Letter No.25672/UD-5/2019-2 dated 22.05.2020 recorded that the appeal preferred by the petitioner has been allowed that the open-space reservation (OSR) was reserved under the Detailed Development Plan (DDP) has not yet acquired for that purpose. After the orders dated 22.05.2020, the first respondent appears to have passed further orders directing the 2nd respondent to obtain a legal opinion.

9. Since the subject lands of the petitioners have not been acquired within a period of three years from the date of effecting publication in the Government gazette, the lands are

deemed to be released as per Section 38 of the Tamil Nadu Town and Country Planning Act.

10. Accordingly, this writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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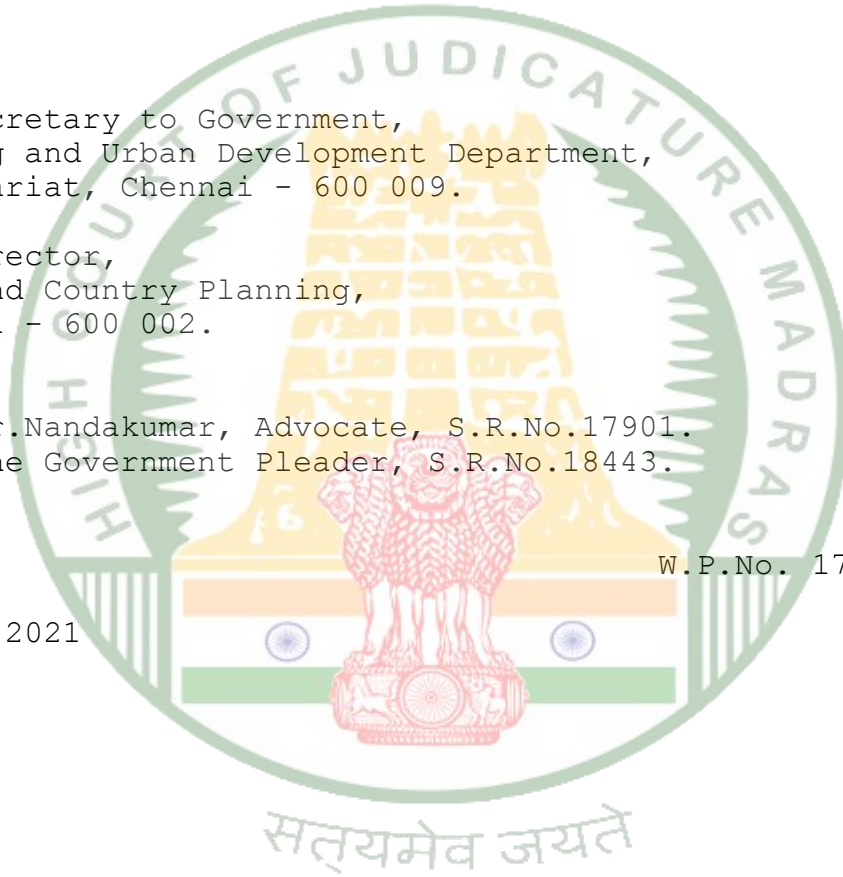
To:

1. The Secretary to Government,
Housing and Urban Development Department,
Secretariat, Chennai - 600 009.
2. The Director,
Town and Country Planning,
Chennai - 600 002.

+1cc to Mr.Nandakumar, Advocate, S.R.No.17901.
+1cc to the Government Pleader, S.R.No.18443.

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MG(CO)
CSR 24.03.2021



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