



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.398 of 2021

J.Vivek

... Petitioner

Vs.

1.The Director of Town and Country Planning,
807, Anna Salai, Chennai.

2.The Member Secretary,
Madurai Local Planning Authority,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the reservation made in respect of the petitioner's land, in New Town Survey No.39/3 (R.S.No.6/8B), Managiri Village, Madurai North Taluk, Madurai in the Mathichiyam Detailed Development Plan Part III A to have lapsed in light of Sec.38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN ACT 35 of 1974).

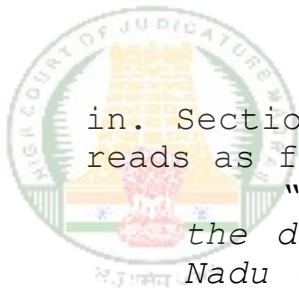
For Petitioner : Mr.Mahaboob Athiff

For Respondents : Mrs.M.Rajaeswari,
Government Advocate.

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents. With their consent, the writ petition is taken up for disposal.

2.The petitioner is the owner of the petition mentioned land. It was shown as an area earmarked as "no construction area" in the Mathichiyam Detailed Development Plan Part III A published in the year 1999. The petitioner points out that since consequential acquisition proceedings were not taken, Section 38 of Town and Country Planning Act, 1971, which provides for lapsing will kick



in. Section 38 of Tamil Nadu Town and Country Planning Act, 1971 reads as follows:

"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."

3.Three facts are not in dispute. The petitioner is the owner of the land in question. It was covered under the detailed development plan. Consequential acquisition proceedings were not taken within time. Therefore, the Section 38 of the Act will automatically come into play and it cannot be stopped. Therefore, the petitioner is entitled to declaration as sought for.

4.At this stage, the learned Government Advocate would point out that the petition mentioned land falls within what is known as water spread area and that construction activities are prohibited therein. She would also point out that it is located near a water body.

5.These are aspects, that are beyond the scope of the present writ proceedings. If the authorities want to take action in respect of the petition mentioned land that will have to be dehors the publication set out in the detailed development plan. The only relief that I am granting in this writ petition is that the effect of lapse will kick in, in the light of Tamil Nadu Act 35 of 1974.

6.The writ petition is allowed on these terms. No costs.

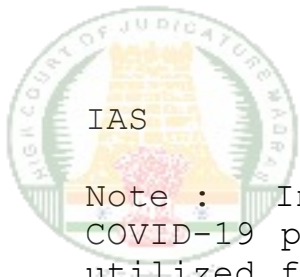
Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



IAS

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 Director of Town and Country Planning,
807, Anna Salai, Chennai.
- 2.The Member Secretary,
Madurai Local Planning Authority,
Madurai.

+1 CC to SGP (SR-2608[F] dated 01/02/2021)

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KM (10.02.2021) 3P 4C