



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 25.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.8515 of 2021

(Through Video Conferencing)

Kannapiran

... Petitioner

Vs.

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

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

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of declaration to declare the reservation made in respect of the petitioner's land, in R.S.No.143/6 and 147/1A Kochadai Village, Madurai, in the Kochadai Detailed Development plan no.1 to have lapsed in light of Section 38 of the Tamilnadu Town and Country Planning Act, 1971 (TN Act 35 of 1974).

For Petitioner	:Mr.M.Mahaboob Athiff for M/s.Ajmal Associates
For Respondents	:Mr.M.Lingadurai Government Advocate

ORDER

This writ petition has been filed for a declaration to declare the Kochadai 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').

2. The case of the petitioner is that he is the owner of the subject property by virtue of a registered sale deed dated 22.07.1980. The further case of the petitioner is that patta was also granted in his favour in patta No.572. The petitioner wanted to develop his property and he had approached the respondents and he was informed that the plan sanction will not be given since Kochadai detailed development plan has already been notified under Section 31 of the Act. The petitioner was informed that the concerned place is reserved for a proposed scheme road under the detailed development plan. Aggrieved by the same, the present writ petition has been filed before this Court.



3. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

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.(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.

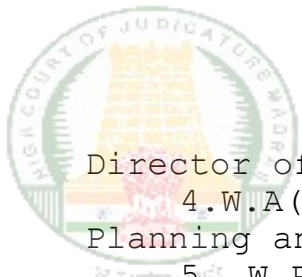
12.It is also brought to the knowledge of this Court that the writ appeal filed by the official respondents in WA(MD) No.340 of 2020, against the order dated 27.02.2017 in W.P.(MD) No.14456 of 2014 was also dismissed on 02.03.2020."

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. <https://hcservices.ecourts.gov.in/hcservices/>)



Director of Town and Country planning ;

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

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

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 2.

+1 CC to M/s.SPL GP (SR-20561[F] dated 29/06/2021)

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