



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19451 of 2020

and

W.M.P. (MD)Nos.16226 and 16228 of 2020

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J.Balaji

... Petitioner

Vs.

1.The Director,

The Directorate of Town & Country Planning,
807, Anna Salai, Chennai - 600 002.

2.The Kumbakonam Local Planning Authority,

Represented by its Member Secretary,
Presently functioning at District Town Planning Office,
A2-Arulanantha Nagar, 7th Street,
Thanjavur - 613 007.

3.The Kumbakonam Municipality,

Kumbakonam,
Represented by its Commissioner.

... Respondents

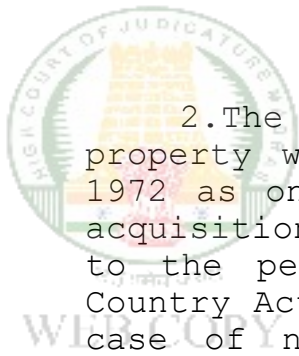
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned proceedings of the 1st respondent Na.Ka.14336/2019/TCP2 dated 06.01.2010 and the 2nd respondent in the proceedings by way of Resolution No.16 dated 27.06.2019 and quash the same as illegal, incompetent and without jurisdiction and consequentially direct the respondents to release the petitioner's land in T.S.No.93/2, Ward No.1, Dr.Murthy Road, Kumbakonam Town from the reservation for scheme road 'C6-C6' 50 feet wide scheme road and AA 40 feet in the Master Plan notified as per G.O.No.2416 RDLA dated 16.11.1972.

For Petitioner : Mr.Lakshmi Shankar.H

For Respondents : Mrs.S.Srimathy,
Special Govt. Pleader for R1 & R2
Mr.M.Rajarajan,
Additional Government Pleader for R3

ORDER

Heard the learned counsel on either side.



2.The petitioner's counsel states that the petition mentioned property was shown in the development plan published in the year 1972 as one earmarked for road purposes. But then, consequential acquisition proceedings have not been taken. Therefore, according to the petitioner's counsel, Section 38 of Tamil Nadu Town and Country Act, 1971, will kick in. He would also point out that in a case of nearby property, an order was passed on 09.10.2020 in W.P.(MD)No.8852 of 2020.

3.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.

4.Section 38 of the Tamil Nadu Town and Country Planning Act 1971, has been considered by various Benches of this Court which includes the following:

(1)The Director, Town and Country Planning, Chennai and another vs M.Dasarathan and another, in W.A(MD)No.754 of 2019.

(2)The Director, Town and Country Planning, Chennai and another vs P.Babu, in W.A(MD)No.447 of 2020.

(3)A.Bhaskaran vs The Director of Town and Country Planning, Chennai and others, in W.P.(MD)No.13645 of 2017 (passed by me)

5.In all the aforementioned judgments, it has been consistently held that if the lands are not acquired within a period of three years from the date of publication of notice in the Government Gazette regarding preparation of regional plan or master plan or detailed development plan, etc, as the case may be, the lands shall deem to be released from the reservation.

6.In the case on hand the publication was effected way back on 16.11.1972. Admittedly the subject lands have not been acquired within a period of three years from the date of publication. In view of the same, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 and also as per the judgments referred to supra, the lands shall be deemed to be released from reservation. The averments set out in the affidavit have not controverted.



7.For the forgoing reasons, I direct the respondents to release the petitioner's petition mentioned land by treating the same as having lapsed under Section 38 of Tamil Nadu Town and Country Planning Act. The writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
The Directorate of Town & Country Planning,
807, Anna Salai, Chennai - 600 002.
- 2.The Member Secretary,
Kumbakonam Local Planning Authority,
Presently functioning at District Town Planning Office,
A2-Arulanantha Nagar, 7th Street,
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- 3.The Kumbakonam Municipality,
Kumbakonam,
Represented by its Commissioner.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-2529[F] dated 01/02/2021)

+1 CC to Spl GP (SR-2792[F] dated 02/02/2021)

W.P (MD) No.19451 of 2020
29.01.2021

VB (11.02.2021) 3P 6C