



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.1153 of 2022

Mr.A.RajendraPrabhu

...Petitioner

Vs.

1. The Secretary,
Housing and Urban Development Department,
Fort St George, Chennai - 600 015.
2. The Director,
Tamil Nadu Town and Country Planning,
Chennai - 600 002.
3. The Member Secretary,
Coimbatore Local Planning Authority,
Raju Naidu Street, Tatabad, Coimbatore - 641 012.
4. The Commissioner,
Coimbatore Corporation,
Coimbatore.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to declare that the petitioner's land comprised in S.No.291/2, Komarapalayam Village, Coimbatore, measuring about 2 acres and 10 cents is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the respondent to pass appropriate orders for release of petitioner's land comprised in S.No.291/2, Komarapalayam Village, Coimbatore.

For Petitioner : Mr.Dhalapathy Vignesh Kumar

For R1 to R3 : Mrs.V.YamunaDevi
Special Government Pleader



O R D E R

The writ on hand has been instituted to declare that the petitioner's land comprised in S.No.291/2, Komarapalayam Village, Coimbatore measuring about 2 acres and 10 cents is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act 1971 and direct the respondent to pass appropriate orders for release of the petitioner's land.

2. The petitioner states that he is the absolute owner of the land situated at S.No.291/2, Komarapalayam Village, Coimbatore measuring about 2 acres and 10 cents. He purchased the land by a registered sale deed dated 25.08.2015. After purchase, revenue records were mutated in favour of the petitioner. He is in absolute possession of the subject property.

3. The grievances of the writ petitioner is that as per Section 28 of the Tamil Nadu Town and Country Planning Act [hereinafter referred to as "the Act"], the Government has to approve the master plan and a notification has to be published under Section 30 of the Act.

4. The learned counsel for the petitioner mainly contended that no approval was granted nor any notification was issued approving the master plan and therefore, under Section 38 of the Act the land is deemed to have been released in favour of the owner of the land. Therefore, the petitioner has to get an appropriate order from the authority and thus, the present writ petition is filed.

5. The learned Special Government Pleader appearing on behalf of the respondent 1 to 3 mainly made a submission that the subject property has not been acquired under the Land Acquisition Act. Though Master plan has been prepared, even in case it is not implemented the question of release would not arise as the land itself is yet to be acquired. Thus, the writ petition itself is premature and is to be rejected.

6. This Court is of the considered opinion that presumptive release need not be granted in a writ proceedings under Article 226 of the Constitution of India. Such presumptive or relief based on certain apprehension if granted, unnecessarily provide a right to the person in favour of whom such relief is granted. Thus, under those circumstances, it may not be possible for the Government even to acquire the land in public interest for implementation of any master plan or any other schemes. Therefore, such presumptive orders if passed would cause infringement of public right and further, in the absence of establishing a cause, writ petition need not be entertained by the High Court.



7. In the present case, admittedly, the land acquisition proceedings are not initiated, the master plan was prepared, however, not approved by the competent authority under the provisions of the Tamil Nadu Town and Country Planning Act. Mere preparation of a master plan would not confer any right to the owner to seek any relief from the High Court in a writ proceedings. Mere preparation of master plan by the Government would not be construed as a cause for the purpose of maintaining a writ petition. Thus, as of now there is no land acquisition proceedings initiated nor the master plan prepared is approved under the provisions of the Act. Therefore, the question of release of land does not arise as the very word 'release' can be applied only if it is acquired. If the land is acquired, the question of release would arise or the acquired land is allotted to any other local authority, then also the point of release may arise. In the absence any acquisition, invoking Section 38 for release would not arise at all.

8. Therefore, the petitioner states that he is in possession of land, he is free to enjoy his land as per law and there is no impediment. However, if any acquisition proceedings are initiated in future, that may be objected or otherwise by the aggrieved persons. Further, invoking Section 38 of the Act would arise only if any approval is granted under Section 28 and 30 of the Act. If, no approval has been granted under Section 28 and 30 of the Act, the question of invoking Section 38 of the Act would not arise at all as the plan itself is not approved by the competent authorities under the provisions of the Act.

9. The learned counsel for the petitioner made a submission that in some other cases under Section 38 of the Tamil Nadu Town and Country Planning Act, the authorities are directed to pass release order.

10. This Court is of the considered opinion that in the absence of any acquisition proceedings or allotment of land to the local authority, where is the question of releasing of the property. The very language employed in the Statute that the property deemed to be released indicates that there is a pre-condition that the land is acquired. In the absence of any acquisition, question of release would not arise at all. Thus, the facts and circumstances of the present case could not be applied in respect of the other cases decided and in the present case, no acquisition proceedings have been initiated nor master plan prepared is approved under the provisions of the Act. Thus, it is for the petitioner to use the property in the manner known to law and no orders are required from any authority as the right of the property is a right conferred under the Article 300A of the Constitution of India and such a property right can be taken away only by following the procedures as contemplated under law and when such a right is already in existence for any citizen, who is



having a property, no orders from the Court is required.

11. With these clarifications, this Writ Petition stands disposed of. No costs.

WEB COPY

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jeni/Cse

To

1. The Secretary,
Housing and Urban Development Department,
Fort St George, Chennai - 600 015.
2. The Director,
Tamil Nadu Town and Country Planning,
Chennai - 600 002.
3. The Member Secretary,
Coimbatore Local Planning Authority,
Raju Naidu Street, Tatabad, Coimbatore - 641 012.
4. The Commissioner,
Coimbatore Corporation,
Coimbatore.

+1cc to Government Pleader SR. No.6435

W.P.No.1153 of 2022

RK (CO)
PR (11/02/2022)