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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.1463 OF 2022

1.D.Kanagarathinam

2.D.Sivagurunathan

3.D.Dharanidharan

...Petitioners / Petitioners

Vs

1.The Director of Town & Country Planning,
Office of Directorate of Town & Country Planning,
Second, Third and Fourth Floors,
E & C Market Road,
Koyambedu, Chennai - 600 107.

2.The Member Secretary,
Tiruppur Local Planning Authority,
1st Floor, Kumaran Commercial Complex,
Tiruppur - 641 601.

...Respondents / Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of declaration, to declare that the property in Old T.S.No.Ward E, Block - 9, TS No.108/2, 110/survey No T.S.No-7, 18, Block 149, Ward-E, Thottipalayam Village, Tiruppur North Taluk, Tiruppur is forming part of detailed development plan (CN) No.2/1979 in MAP No.5 dated 07.03.1979 for a "H-H 20 feet road F7-F7 40 feet road" which was approved by the Director of Town and Country Planning, the first respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the decision of this Hon'ble Court in the case of Kannabiran Vs. The Director of Town and Country Planning, in W.P (MD) No.8515 of 2021 dated 25.06.2021.

For Petitioners : Mr.Puhazh Gandhi.P

For Respondents : Mr.G.Krishna Raja
Additional Government Pleader



ORDER

This Writ Petition has been filed for a declaration to declare that the property in Old T.S.No.Ward E, Block - 9, TS No.108/2, 110/survey No T.S.No-7, 18, Block 149, Ward-E, Thottipalayam Village, Tiruppur North Taluk, Tiruppur is forming part of detailed development plan (CN) No.2/1979 in MAP No.5 dated 07.03.1979 for a "H-H 20 feet road F7-F7 40 feet road" which was approved by the Director of Town and Country Planning, the first respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the decision of this Hon'ble Court in the case of Kannabiran Vs. The Director of Town and Country Planning, in W.P (MD) No.8515 of 2021 dated 25.06.2021.

2. The case of the petitioners is that they are the owners of the subject property by virtue of the sale deed dated 30.09.2015 in Document Nos.10668/2015 & 10669/2016 and Settlement Deed in Document Nos.10670/2015 & 10671/2015 on the file of the District Registrar, Tiruppur. They are in possession and enjoyment of the subject property. The petitioners wanted to develop their property and they had approached the respondents and they were informed that the plan sanction will not be given since detailed development plan has already been notified under Section 37 of the Act. The petitioners were 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, Mr.P.Puhazh Gandhi, learned counsel appearing for the petitioners and Mr.G.Krishna Raja, learned Additional Government Pleader appearing 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 Tamil Nadu Gazette.

5. It is not necessary for this Court to consider the entire scheme of the Act, since for the very same detailed development scheme, a Division Bench of this Court in W.A (MD) No.485 of 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



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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. 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 37 of the Act in the year 1979. 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 petitioners has to be released from the 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(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Director of Town & Country Planning,
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E & C Market Road,
Koyambedu, Chennai - 600 107.

2.The Member Secretary,
Tiruppur Local Planning Authority,
1st Floor, Kumaran Commercial Complex,
Tiruppur - 641 601.

+1cc to Mr.P.Puhazh Gandhi, Advocate Sr.No.7096

+1cc to the Government Pleader Sr.No.8063

W.P.No.1463 of 2022

EV(CO)
RVM(28/02/2022)