



WEB COPY



W.P.No.15627 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15627 of 2022

P. Palanisamy

... Petitioner

Versus

1. The Director of Town and 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.
3. The Land Acquisition Officer
Tiruppur Local Planning Authority
1st Floor, Kumaran Commercial Complex
Tiruppur-641 601.

... Respondents



W.P.No.15627 of 2022

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration to declare that the property to the extent of 880.72 sq.m. of land in Old T.S.No.63pt, Ward-L, Block-6 corresponding New T.S.No.7/1, 7/2 ward-A, Block-70 in Tiruppur Corporation, Tiruppur South Taluk, Tiruppur District ("Property") forming part of the Approved Tiruppur MAP.No.5 DDP(V)/DTCP No. 35/2006 vide Pro. ROC.No.12378/2004 DP2 for "Public Purpose" which was approved by the Director of Town and Country Planning, dated 22.09.2006, 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 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 Petitioner : Mr.P.Puhazh Gandhi

For Respondents : Mr.P. Sathish
Additional Government Pleader



W.P.No.15627 of 2022

ORDER

WEB COPY

This writ petition is filed seeking for issuance of Writ of Declaration, to declare that the property to the extent of 880.72 sq.m. of land in Old T.S.No.63pt, Ward-L, Block-6 corresponding New T.S.No.7/1, 7/2 ward-A, Block-70 in Tiruppur Corporation, Tiruppur South Taluk, Tiruppur District ("Property") forming part of the Approved Tiruppur MAP.No.5 DDP(V)/DTCP No. 35/2006 vide Pro. ROC.No.12378/2004 DP2 for "Public Purpose" which was approved by the Director of Town and Country Planning, dated 22.09.2006, 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 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 petitioner is that the aforesaid properties were purchased by the petitioner and the petitioner has been in possession and enjoyment of the properties. It is to be noted that as per Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 (in Short, "the Act"), if the Planning Authority reserves any lands, which are at the disposal of any



W.P.No.15627 of 2022

private person to be required for any public purpose under the Detailed Development Plan, the same can be acquired by the State Government by invoking the provisions of the Land Acquisition Act, 1894 (Central Act 1/1894). While Section 38 of the Act, contemplates that, if such acquisition is not undertaken and completed within three years from the date of publication of the Detailed Development Plan under Section 27 of the Act, the land will be deemed to have been released from the reservation made under such Detailed Development Plan. Furthermore, the Tiruppur Local Planning Area Rathinaswamypuram Detailed Development Plan-05 has been approved under Section 33(2) of the Act, dated 02.05.2001. Therefore, the respondents ought to have initiated and acquired the petitioner's lands under Section 37 of the Act. Hence, the petitioner was informed that the concerned place is reserved for a proposed road scheme under the Detailed Development Plan. However, since the respondents have failed to acquire the land reserved for various purposes under the Detailed Development Plan within the stipulated time, it stands lapsed. Therefore, the petitioner has come forward with the present writ petition.

3. The learned counsel appearing for the petitioner submitted that while Section 38 of the Tamil Nadu Town and Country Planning Act,



W.P.No.15627 of 2022

1971, contemplates that, if such acquisition is not undertaken and the same was not completed within a period of three years from the date of publication of the Detailed Development Plan under Section 27 of the Tamil Nadu Town and Country Planning Act, 1971, the land will be deemed to have been released from the reservation made under such Detailed Development Plan.

4. Mr.G.Krishna Raja, learned Additional Government Pleader, appearing for the respondents submitted that it is not in dispute that the petitioner is the owner of the properties. The land is required for public use and laying of road, for which the respondents issued a Notification dated 30.05.2001 under Section 31 of the Tamil Nadu Town and Country Planning Act, 1971. However, though the said notification was issued on 03.05.2001, even after adopting the Scheme, it was not implemented and the very same finding, which has to be arrived at in the present case, was rendered in the above decision, in the case of *Kannapiran*.

5. It is not necessary for this Court to consider the entire scheme of the Act, since the very same issue is decided in Kochadai Detailed



W.P.No.15627 of 2022

Development Scheme, by a Division Bench of this Court in W.A.(MD)No.485 of 2020 wherein it was held that the scheme had lapsed by virtue of Section 38 of the Act. The relevant portion of the order in W.P.No.(MD).No.8515 of 2021 in case of ***Kannapiran v. The Director of Town and Country Planning***, dated 25.06.2021 is extracted hereunder:-

"11. As rightly pointed out by the learned counsel appearing for the respondent/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 and 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 W.A.(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."



W.P.No.15627 of 2022

WEB COPY

6. In the present case, the development notification was issued in the year 2006. As per Section 38 of the Town and Country Planning Act, the same has to be implemented within the period of three years and the land has to be acquired. However, till date, the scheme was not implemented and land has also not been acquired as per the development plan and, accordingly, applying the ratio laid down by the Division Bench of this Court in *Kannapiran's case (supra)*, the writ petition is liable to be allowed.

7. Accordingly, for the reasons aforesaid, following the ratio laid down in *Kannapiran's case (supra)*, this writ petition is allowed. No costs.

10.08.2022

2/2

msm
Speaking Order/ Non Speaking Order
Index: Yes/ No

To

1. The Director of Town and Country Planning
Office of Directorate of Town & Country



W.P.No.15627 of 2022

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.
3. The Land Acquisition Officer
Tiruppur Local Planning Authority
1st Floor, Kumaran Commercial Complex
Tiruppur-641 601.

M.DHANDAPANI, J.



WEB COPY



W.P.No.15627 of 2022

msm

W.P.No. 15627 of 2022

10.08.2022