



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 12.12.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

**W.P.No.27672 of 2022**

Alagirisamy

... Petitioner

Vs

1. The Director of Town & Country Planning,  
807, Anna Salai, Chennai, Chennai District.
2. The Member Secretary,  
Coimbatore Town and Country Planning Authority,  
Coimbatore,
3. The Coimbatore Corporation,  
Represented by its Commissioner, Coimbatore District.  
[R3 impleaded vide Order dt.31.10.2022 made in  
WMP.28026/2022 in W.P.27672 of 2022 by PDAJ]

...

Respondents

Prayer:- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Declaration to declare the reservation made in respect of the petitioner's land in Survey No.383/1, Vilankuruchi Village, Coimbatore North Taluk, Coimbatore forming part of the Vilangurichi detailed development plan No.8 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.Abdul Basith

For Respondents : Mr.V.Nanmaran,  
Additional Government Pleader – R1

Mr.Najeeb Ushman Khan – R2 & R3

### **ORDER**

This writ petition has been filed to declare that the reservation made in respect of the petitioner's land in Survey No.383/1, Vilankuruchi Village, Coimbatore North Taluk, Coimbatore forming part of the Vilangurichi detailed development plan No.8 to have lapsed in light of Section 38 of the Tamilnadu Town and Country Planning Act, 1971 [TN Act 35 of 1974].

2. The case of the petitioner is that he is the owner of the property in Survey 383/1 and 384/2, Vilankuruchi Village North Taluk, Coimbatore to an extent of 0.56 acres in SF.No.384/2 and 2.01 acres in S.F.No.383. When the petitioner wanted to develop his 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 and one of the 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.

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3. Heard, Ms.L.Abdul Basitha, learned counsel appearing for the petitioner and Mr.V.Nanmaran, learned Additional Government Pleader appearing for the first respondent.

4. The main issue that has been urged before this Court is that the detailed development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning 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 dwell much on the entire allegation in the Writ Petition, 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 Tamil Nadu Town and Country Planning Act.

The relevant portions in the judgment are extracted hereunder :-

“11. As rightly pointed out by the learned counsel appearing for the respondents/writ petitioner that the counter affidavit proceeds on the merits of the claim and in no way deal with deemed



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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. 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).**

Section 38 of the Tamilnadu Town and Country Planning Act 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.

7. In the present case, the detailed development plan was notified under Section 37 of the Act in the year 2007. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.



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8. In the result, the property belonging to the petitioner has to be released from the detailed development plan scheme, since it has lapsed under Section 38 of the Act.

9. Accordingly, this Writ Petition is allowed. No costs.

**12.12.2022**

vrc

To,

1. The Director of Town & Country Planning,  
807, Anna Salai, Chennai, Chennai District.
2. The Member Secretary,  
Coimbatore Town and Country Planning Authority,  
Coimbatore,
3. The Commissioner,  
Coimbatore Corporation, Coimbatore District.



**W.P.No.27672 of 2022**

**N. SATHISH KUMAR, J.**

This Writ Petition has been listed today at the instance of the learned Additional Government Pleader appearing for the first respondent under the caption 'for being mentioned'.

2. Mr.K.M.D.Muhilan, learned Additional Government Pleader would submit that instead of 'the scheme lapsed' mentioned at the end of the 7<sup>th</sup> para, it is has to be mentioned as 'the reservation is released from the detailed plan'. It is his further submission that if the Government intends to acquire the land for any purpose, this order will not be a bar for the Government in view of the provision of Land Acquisition Act.

3. In view of the above submissions, instead of 7<sup>th</sup> para in the Order dated 12.12.2022, the following paragraphs shall be incorporated in the Order.

7. In the present case, the detailed development plan was notified under Section 37 of the Act in the year 1992. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the reservation is released from the detailed plan.

7a. It is made clear that mere releasing of the lands, as per Section 38 will not bar the authorities to pass orders strictly in terms of



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the Rules. The lapse under Section 38 will not affect the Rule 4[5] of Tamil Nadu Regularization of Unapproved Layouts and Plot Rules, 2017.”

7b. However, it is admitted case that the land has not been acquired within a period of three years. In such view of the matter, as per Section 38 of the Tamilnadu Town and Country Planning Act, the petitioner's land shall be released from the development plan. It is also made clear that in future, if the Government intends to acquire the land for any purpose, this order will not be a bar for the Government in view of the provision of Land Acquisition Act. Similarly, any application is filed or pending for regularization of unapproved layout, such application shall be dealt as per Tamilnadu Town and Country Planning Act, 1971, on its own merits, strictly in terms of the Rules.

4. The registry is directed to substitute above paragraphs in the above Order and issue fresh Order copy to the parties concerned.

**24.02.2023**

vrc



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**N. SATHISH KUMAR, J.**

VRC

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**24.02.2023**