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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.29297 of 2022

V.Vijayalakshmi

... Petitioner

Vs

1. The Managing Director,
Office of Director Municipality,
Chepauk, Near Anna Square, Chennai – 600 005.
2. The District Collector,
Office of District Collector,
Namakkal District, Tamil Nadu – 637 001.
3. The Commissioner,
Namakkal, Municipality,
Namakkal District, Tamil Nadu – 637 001.
4. The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor, C and E Market Road,
Koyembedu, Chennai – 600 107.
5. The Assistant Director,
Namakkal District Town and Country Planning,
No.6/1217, Paramathi Road, [South Side],
Namakkal – 637 001.
[R4 & R5 impleaded vide Order dt.21.11.2022 made in



WMP.29932/2022 in W.P.29297 of 2022 by PDAJ]

...

Respondents

Prayer:- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Certiorified Mandamus calling for the records of the impugned Order dated 01.09.2022 in Na.Ka.No.1010/2022/F1 by the third respondent herein and quash the same and grant building approval to the petitioner's land in S.No.6/3A, situated at Plot No.17, 18, Block B-2, Namakkal Ward No.9, Savadi Street, Ramapuram Pudur, Sempaalikaradu to an extent of 2266.25 sq.ft.

For petitioner : Mr.Suryakumaran

For Respondents : Mr.V.Nanmaran,
Additional Government Pleader – R1,2, 4

Mr.Raja Mathivanan – R3 & R5

ORDER

This writ petition has been filed to quash the impugned Order dated 01.09.2022 passed by the third respondent herein and grant building approval to the petitioner's land in S.No.6/3A, situated at Plot No.17, 18, Block B-2, Namakkal Ward No.9, Savadi Street, Ramapuram Pudur, Sempaalikaradu to an extent of 2266.25 sq.ft.



2. The case of the petitioner is that he is the owner of the land in S.No.6/3A situated at Plot No.17, 18, Block B-2, Namakkal Ward No.9, Savadi Street, Ramapuram Pudur, Sempaalikaradu to an extent of 2266.25 sq.ft. When the petitioner wanted to develop his property and had approached the respondents and he was 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 Namakkal District Extension Development Scheme. Aggrieved by the same, the present writ petition has been filed before this Court.

3. Heard, Mr.R.Suryakumaran, learned counsel appearing for the petitioner and Mr.V.Nanmaran, learned Additional Government Pleader appearing for the respondents 1, 2 and 4.

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 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.

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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.

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 Managing Director,
Office of Director Municipality,
Chepauk, Near Anna Square, Chennai – 600 005.
2. The District Collector,
Office of District Collector,



Namakkal District, Tamil Nadu – 637 001.

3. The Commissioner,
Namakkal, Municipality,
Namakkal District, Tamil Nadu – 637 001.
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W.P.No.29297 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 7th 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 7th 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 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.

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W.P.No.29297 of 2022

24.02.2023