



WEB COPY



W.P.(MD).No.20773 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.08.2022

ORDER PRONOUNCED ON : 08.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.20773 of 2013

and

MP(MD).No.1 of 2013

M.S.Mohamed Hadi

... Petitioner

Vs.

1.The Secretary to Government,
Housing Board and Urban Development Department,
St.George Fort,
Chennai-09.

2.The Director,
Town and country Planning Department,
Fourth Floor, Chengalvarayan Building,
Opp to LIC Building,
807, Anna Salai,
Chennai-2.

3.The Member Secretary,
Town and country Planning,
108, Vaikal Palam,
Tiruvandrum Road,
Opp to V.O.C.Ground,
Palayamkottai,
Tirunelveli-2.

4.The Commissioner,
Tirunelveli Municipal Corporation,
S.N.High Road,
Tirunelveli-01.

... Respondents



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Prayer : This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to release the petitioner's land shown as scheme road and park and other public purposes in the Melapalayam Detail Development Plan in S.No.85/4A, Melapalayam Village, Tirunelveli District under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner	: Mr.V.Meenakshi Sundaram for Mr.D.Nalla Thambi
For R1 - R2	: Mr.N.Muthuvijayan Special Government Pleader
For R3	: Mr.A.Muthukaruppan
For R4	: Mr.S.P.Maharajan

ORDER

The present writ petition has been filed seeking a mandamus, directing the respondents to release the petitioner's land shown as scheme road and park and other public purposes proposed in Melapalayam Detailed Development Plan in Survey No.85/4A, Melapalayam Village, Tirunelveli District under Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

2. According to the petitioner, an extent of 1.02 acres in Survey No. 85/4A belonged to one Haji Sappani Mohamed Abubucker, who sold the same to one M.A.Hader Maideen under a registered sale deed, dated 28.06.2005. The petitioner had purchased 40 cents out of 1.02 acres on the



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eastern side from the above said Hader Maideen under a registered sale deed, dated 22.08.2011.

3. According to the petitioner, his predecessor in title had constructed a compound wall on four sides and there are row of houses inside the compound wall. According to the petitioner, the fourth respondent corporation even without giving any prior notice, inspected the site and started to demolish the compound wall. On verification, the petitioner came to know that the third respondent had given technical approval for a layout on 17.10.2007 and in the said layout, the property now in possession of the petitioner was shown as a road and a park. However, the conditions imposed in the said technical approval were not complied with by the predecessor in title of the petitioner and hence, it has not fructified into a confirmed layout approval. The conditions imposed in the said technical approval were not accepted by his predecessor in title and he has dropped the said proposal. The petitioner has further contended that not a single plot was sold out as per the said technical approval of the layout. The entire land was enjoyed by his predecessor in title as a single parcel.

4. The learned counsel for the petitioner has further contended that since the land in possession of the petitioner was shown as a road and a park



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in the technical layout approval, the said land was shown as a road in Melapalayam Detailed Development Plan No.5 issued under Section 27 of Tamil Nadu Town and Country Planning Act, 1971. The said notification was issued on 13.07.1994.

5. The learned counsel for the petitioner has further contended that the said Detailed Development Plan was approved by the director as contemplated under Section 29 of the Act on 31.03.1998. Thereafter, certain variations were introduced in the Detailed Development Plan as contemplated under Section 33 (1) of the said Act on 25.06.2008.

6. The learned counsel for the petitioner has further contended that as per Section 38 of the Tamil Nadu Town and Country Planning Act 1971, within five years from the date of publication of notice under Section 27 of the said Act, acquisition proceedings should have been initiated as contemplated under Section 37 (2) of the said Act. In case, if no acquisition proceedings were initiated, the land shall be deemed to have been released from such reservation, allotment or designation.

7. The learned counsel for the petitioner has further contended that in the present case, Section 27 notice has been issued on 13.07.1994 and the



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lands ought to have been acquired within a period of five years and hence, the

lands are deemed to have been released from the Detailed Development Plan.

He further contended that the petitioner has purchased the property only on 22.08.2011 after the deemed release.

8. The learned counsel for the petitioner has further contended that when the technical approval was subjected to various conditions and the said conditions were not acceptable to the layout promoter, he had dropped the said proposal, then the land should only to be construed to be an unplotted land. None of the plots created in the said layout were sold as a plot. The entire land was enjoyed only by the layout promoter till it was sold to the writ petitioner. Hence, the corporation cannot contend that road and park were already reserved in an unapproved layout and the issue of acquisition under the Detailed Development Plan does not arise. In view of the above said facts, the petitioner has sought for a Mandamus to release the petitioner's land as contemplated under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

9. Per contra, the learned counsel for the fourth respondent had contended that technical approval has been granted for the layout on 17.07.2007 as contemplated under Section 49 of Tamil Nadu Town and



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Country Planning Act, 1971. Just because the conditions imposed in the said technical approval were not followed, it does not mean that the layout remains unapproved. He further contended that once a particular land is shown as a road, park or reserved for any other public use, the same need not be acquired by the Government invoking Sections 36 or 37 of Tamil Nadu Town and Country Planning Act, 1971. The learned counsel for the fourth respondent has placed before this Court the technical approval granted to the layout. The learned counsel also relied upon the Melapalayam Detailed Development Plan No.5, which was published in the district gazette on 13.07.1994 as contemplated under Section 27 of the said Act. When the lands are already shown as a road and a park, the layout promoter has no right, whatsoever to alienate the same in favour of the petitioner herein on 22.08.2011. Therefore, the respondent authorities are at liberty to remove any encroachment in the said lands reserved for public purpose and convert it into a road as contemplated under the Detailed Development Plan. Hence, he prayed for dismissal of the writ petition.

10. I have carefully considered the submission made on either side and perused the records.

11. The third respondent herein has granted technical approval for a layout promoted by the petitioner's vendor in Document No.72 of 2007 on



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17.07.2007. A perusal of the said plan indicates that it is only a provisional approval and unless the area earmarked for road and park are gifted to the corporation, the corporation should not grant final approval for the layout. Hence, it is clear that the approval granted by the third respondent is only a provisional one and the final approval has to be granted only by the fourth respondent after the promoter satisfies the conditions. There are no records to the effect that the promoter has complied with the said condition and thereafter, the fourth respondent has granted final approval to the layout plan. Hence, it is clear that though the layout was provisionally approved, it was not taken forward to its logical end to get a final approval from the fourth respondent. It remains as a land parcel.

12. The petitioner has specifically contended that the plots created in the said technically approved layout were not sold. According to the learned counsel for the petitioner, not even a single plot was sold to the purchasers by the layout promoter as per the technically approved layout plan. The entire land was retained by the promoter himself. Hence, according to him, the promoter has not accepted the conditions therein and dropped the proposal of getting a layout approval. Thereafter, the promoter has sold 40 cents of land in favour of the writ petitioner on 22.08.2011.



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13. The technical approval has been granted by the third respondent herein under Section 49 of the Tamil Nadu Town and Country Planning Act, 1971. As per Section 50 of the said Act, any permission for development granted under Section 49 shall remain in force only for a period of 5 years from the date of such permission. The period could be extended at the request of the promoter. However, such extended period shall not exceed three years. On expiry of such permission, only a fresh application has to be presented for layout approval. Even assuming that the technical approval results in a layout approval, the same has not been taken forward by the promoter and it has lapsed on 16.07.2010. Therefore, the promoter has not chosen to file any fresh application seeking layout approval. Thereafter, the promoter has sold 40 cents of land in favour of the writ petitioner on 22.08.2011. The sale deed in favour of the petitioner does not disclose any plot number. The above said facts make it clear that the technical approval granted by the third respondent herein was not taken forward to its logical end and it has not ended up in the final approval of the fourth respondent corporation. Hence, it is clear that there was no layout at all for the disputed land and it was retained as a single parcel of 1.02 acres by the promoter himself.

14. The Melapalayam Detailed Development Plan has been published in the gazette as contemplated under Section 27 on 13.07.1994. A publication



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has been effected under Section 29 on 31.03.1998. Variations have been made in the said notification under Section 33 (1) of the Act on 25.06.2008. As per Section 38 of the Tamil Nadu Town and Country Planning Act 1971, any land that is part of the development plan should be acquired within a period of 5 years from the date of publication of the notice in the Tamil Nadu Government Gazette under Sections 26 or 27 of the Act. In the present case, the notification under Section 27 has been effected on 13.07.1994. Hence, the acquisition proceedings have to be initiated within a period of 5 years from 13.07.1994. In the present case, it is not in dispute that no such acquisition proceedings were initiated within a period of 5 years from the date of notification under Section 27 of the Act.

15. As per Section 38 of the said Act, if the lands are not acquired within the said period of 5 years, they should be deemed to be released from such reservation, allotment or designation. However, Government is at liberty to extend the period for such time, but not exceeding a period of 5 years. It is not the case of the respondent that the Government has extended the period for a further period of 5 years from 1997 onwards. Hence, it is clear that the acquisition proceedings have not been initiated within a period of 5 years from the date of Section 27 notification, they are deemed to have been released from the Detailed Development Plan.



16. The learned counsel for the petitioner had relied upon a judgment of the Hon'ble Supreme Court reported in **2010 (9) SCC 344 (Pillayar P.K.V.K.N Trust Vs. Karpaga N.N.U.S and others)** to impress upon the Court that if the acquisition proceedings have not been initiated within a period of 5 years, the lands are deemed to have been released. Paragraph nos.25 to 28 of the said judgment are extracted as follows:

“25. The High Court then referred to the argument made that admittedly 40 plots were private land and, therefore, even if it is presumed that it was included under the plan of 1992, yet since the land was not acquired either by agreement or by acquisition, they would be deemed to have been released from reservation. The High Court has undoubtedly posed this question up to para 16 but has chosen not to answer it till last. We, therefore, put the same question to the counsel for the respondent as also to the counsel for the Government and both the counsel fairly conceded that the land is still not acquired.

26. Section 38 of the Tamil Nadu Town and Country Plannin Act, 1971 runs as under:

“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



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(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.”

27. In view of the admitted position that the land is not acquired by agreement till the date of the judgment of the High Court, the deeming clause would certainly come into force and, therefore, the land concerned would certainly be deemed to have been released.

28. The High Court has also referred to the decision in Raju S. Jethmalani v. State of Maharashtra where this Court has clearly held that the owner of the special land cannot be prohibited from using it since it is the private property and the Government cannot deprive the persons from using their private property and, therefore, the acquisition of the property is a must before any such person is restrained from using the land.”

17. In view of the above said discussion and the judgment of the Hon'ble Supreme Court, this Court comes to a conclusion that the lands in question were never converted into a layout or sold out as plots in a layout. The lands in dispute were sold as 40 cents in favour of the writ petitioner. Hence, the lands in dispute being private property, not being reserved for any public purpose in an approved layout, the respondent authorities cannot disturb the petitioner's possession without resorting to acquisition proceedings as contemplated under Sections 36 and 37 of Tamil Nadu Town



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and Country Planning Act, 1971. Since acquisition proceedings have not been initiated within a period of 5 years from the date of notification under Section 27 of the Act, the land in dispute is deemed to have been released from the Melapalayam Detailed Development Plan No.5.

18. In view of the above said discussion, this Writ Petition stands allowed and Survey No.85/4A Melapalayam Village, Tirunelveli District is deemed to have been released from the Melapalayam Detailed Development Plan No.5 as contemplated under Section 38 of Tamil Nadu Town and Country Planning Act, 1971. No costs. Consequently, connected Miscellaneous Petition is closed.

08.08.2022

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Internet : Yes/No

Index : Yes/No

To

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Town and country Planning Department,
Fourth Floor, Chengalvarayan Building,
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Chennai-2.



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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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