



W.P.(MD)No.26083 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.11.2022

CORAM

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.26083 of 2022

Muthukarthik, S/o.Late. S.M.Marimuthu

.. Petitioner

Versus

1.The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor, C & E Market Road,
Koyembedu,
Chennai – 600 107.

2.The Member Secretary,
Madurai Local Planning Authority,
Sector – 6, Aanaiyur – Mudakkathan Main Road,
Koodalputhur,
Madurai – 625 017.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to release the petitioner's land, measuring of 16 cents, situated in Survey No. 111/5B (Town Survey No.2/7) in Ward No.25, Kochadai Village, Madurai West Taluk, Madurai District, treating the Kochadai Detailed Development Plan No.3 of Madurai Local Planning area as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mrs.K.Christy Theboral
Additional Government Pleader



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ORDER

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The Petitioner has approached this Court seeking a direction to the respondents to release the his land, measuring of 16 cents, situated in Survey No.111/5B [Town Survey No.2/7] in Ward No.25, Kochadai Village, Madurai West Taluk, Madurai District, treating the "Kochadai Detailed Development Plan No.3" of Madurai Local Planning area as lapsed under Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

2. Heard Mr.R.Karunanidhi, learned counsel for the petitioner and Mrs.K.Christy Theboral, learned Additional Government Pleader, who accepts notice on behalf of the respondents. By consent, the Writ Petition is taken up for final disposal at the admission stage itself.

3. According to the petitioner, he is the owner of the aforesaid land and his mother purchased the said land from third parties by way of registered sale deed, bearing Document No.3257 of 2006 and patta has also been issued in his name, after the said purchase.

4. While matter stood thus, the respondents had earmarked several properties, including the property belonging to the petitioner for "Kochadai Detailed Development Plan No.3" and the plan was approved by the first



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respondent, vide proceedings in Roc.No.24308/20004/DP2, dated 03.03.2002, in terms of Section 29 of the Tamil Nadu Town and Country Planning Act, 1971 and the plan was also published in the Gazette on 19.10.2005 under Section 31 of the Tamil Nadu Town and Country Planning Act, 1971. Thereafter, no steps have been taken to acquire the land nor any notice was issued to the petitioner for acquisition of the same. According to the petitioner, even after lapse of 17 years, there was no action forthcoming from the respondents for acquiring the lands for the purpose of the "Kochadai Detailed Development Plan No.3" and the land remains in the possession of the petitioner as on date.

5. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 provides for release of property in favour of its owner in the event of the property not been acquired within a period of 3 years. It is admitted position that in spite of publication of the approval of the "Kochadai Detailed Development Plan No.3" in the official gazette dated 19.10.2005, till date, the land has not been acquired and therefore, it is deemed to have been released to the owners on expiry of 3 years in the light of Section 38 of said Act. Since the release of the property has not been effected, the petitioner is before this Court, seeking issuance of a Writ of Mandamus.



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6. According to the learned counsel for the petitioner, the entire issue raised by the writ petitioner is squarely covered by the order passed by the Division Bench of this Court reported in **(2011) 8 MLJ 437** in the matter of **Commissioner, Aruppukottai Municipality v.K.S.Kamakshi Chetty and others**. According to the order passed by the Division Bench, when no steps have been taken for completing the acquisition within 3 years period and when the property earmarked for the purpose has not been utilized as per the notification, the property would be deemed to have released from reservation, allotment or designation as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

7. The learned counsel for the petitioner has also relied upon the order passed by this Court in **W.P.(MD)No.4753 of 2017, dated 28.03.2017 [P.Babu vs. The Director and another]**, in which, a direction was issued in identical set of facts and circumstances, directing to release of the land belonging to the petitioner therein from "Kochadai Detailed Development Plan No.3", based on the direction issued by the Division Bench of this Court. Against the said order, the respondents preferred a Writ Appeal in W.A. (MD)No.447 of 2020 before the Division Bench of this Court. The Division Bench, vide its judgment dated 02.06.2020, dismissed the writ appeal and upheld the order of the learned Single Judge. Since the present writ petition



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directly covered by the aforesaid decisions and the directions issued by this Court squarely cover the claim of the petitioner herein, there is no impediment to allow the Writ Petition as prayed for.

8. In the light of the aforesaid facts and circumstances, the Writ Petition is allowed. The respondents are directed to release the petitioner's land measuring of 16 cents, situated in Survey No.111/5B [Town Survey No.2/7] in Ward No.25, Kochadai Village, Madurai West Taluk, Madurai District, from "Kochadai Detailed Development Plan No.3" by passing a specific order within a period of eight weeks from the date of receipt of copy of this order and communicate the same to the petitioner. No costs.

Index : Yes/No
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18.11.2022

To

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V.BHAVANI SUBBAROYAN, J.

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