



WEB COPY



W.P.No.839 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2023

CORAM:

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

**W.P.No.839 of 2023**

N.Ponnusamy @ Pongali Konnar

.. Petitioner

Vs.

1. The Secretary,  
Housing and Urban Developments Department,  
Fort St.George, Chennai - 600 015.

2. The Director,  
Tamil Nadu Town and Country Planning,  
Chennai - 600 002.

3. The Member Secretary,  
Coimbatore Local Planning Authority,  
Raju Naidu Street, Tatabad,  
Coimbatore - 641 012.

.. Respondents

**Prayer :** Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing directing the respondents to declare that the petitioner's land comprised in S.No.357/3B1, Goundapalayam Village, Coimbatore North Taluk, Coimbatore, measuring about 2.60 acres is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the 3rd respondent to pass appropriate orders for release of petitioner's land comprised in S.No.357/3B1, Goundapalayam Village, Coimbatore



W.P.No.839 of 2023

North Taluk, Coimbatore, measuring about 2.60 acres and grant planning approval as per the petitioner's letter dated 10.11.2022.

For Petitioner : Mr.Dhalapathy Vignesh Kumar

For Respondents : Mr.S.Rajesh  
Government Advocate

- - - - -

### **ORDER**

This writ petition has been filed seeking a direction to the respondents to declare that the petitioner's land comprised in S.No.357/3B1, Goundapalayam Village, Coimbatore North Taluk, Coimbatore, measuring about 2.60 acres is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the third respondent to pass appropriate orders for release of petitioner's land comprised in S.No.357/3B1, Goundapalayam Village, Coimbatore North Taluk, Coimbatore, measuring about 2.60 acres.

2. The case of the petitioner is that he is the owner of the subject property by virtue of the Document No.6474 of 2006 on the file of the Sub Registrar Office, Vandavalli. The petitioner wanted to develop his property and he approached the respondents and he was informed that the plan



W.P.No.839 of 2023

sanction will not be given since detailed development plan has already been notified under Section 37 of the Act and the concerned 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.

3. Heard, Mr.Dhalapathy Vignesh Kumar, learned counsel appearing for the petitioner and Mr.S.Rajesh, learned Government Advocate appearing for the respondents.

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 :-

WEB COPY

*“11. As rightly pointed out by the learned counsel appearing for the respondents/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 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



W.P.No.839 of 2023

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 viz.,

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***).

7. Section 38 of the Tamil Nadu Town and Country Planning Act is relevant for our purpose and the same is extracted hereunder:

***"Section 38. Release of land.- If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette***



WEB COPY



W.P.No.839 of 2023

*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."*

8. In the present case, the detailed development plan was notified under Section 37 of the Act in the year 2006. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed. It is made clear that in future, if the Government intends to acquire the land for any other purposes, 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 regularisation of unapproved layout, such application shall be dealt as per Tamil Nadu Town and Country Planning Act, 1971, on its own merits and strictly in terms of the Rules.



W.P.No.839 of 2023

9. It is also made clear that mere releasing of the lands, as per Section 38 of the Act will not bar the authorities to pass orders strictly in terms of the Rules. The lapse under Section 38 of the Act will not affect the Rules 4 and 5 of the Tamil Nadu Combined Development of Building Rules.

10. With the above observations, the Writ Petition is allowed.

However, there shall be no order as to costs.

**30.01.2023**

Index : Yes / No

Neutral Citation : Yes / No

kk

To

1. The Secretary to Government,  
Housing and Urban Developments Department,  
Fort St.George, Chennai - 600 015.
2. The Director,  
Tamil Nadu Town and Country Planning,  
Chennai - 600 002.
3. The Member Secretary,  
Coimbatore Local Planning Authority,  
Raju Naidu Street, Tatabad,  
Coimbatore - 641 012.



WEB COPY



W.P.No.839 of 2023

**N.SATHISH KUMAR, J.**

kk

**W.P.No.839 of 2023**

**30.01.2023**