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W.P.No.1734 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.1734 of 2023
and W.M.P.No.1849 of 2023

T.Ramesh ... Petitioner

Vs.

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

2.The Director of Town and Country Planning,
2,3 and 4th Floor, B, CMDA Office Campus,
E & C Market Road,
Koyambedu,
Chennai - 600 107.

3.The Deputy Director,
Namakkal District Town and Country Planning Office,
Paramathi Road,
Namakkal - 637 001.

4.The Member Secretary/Executive Officer,
Thiruchengode Local Planning Authority,
Thiruchengode,
Namakkal District.

5.The Commissioner,
Thiruchengode Municipality,
No.1, Velur Road, (Near Town Police Station),
Thiruchengode - 637 211.

... Respondents



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Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration declaring that the reservation made in respect of the petitioner's lands comprised in T.S.L.R. No.19/1 (Old S.No.49/1, 49/2 part), T.S.L.R. No.18/1, 19/3 (Old S.No.49/2 part), Ward E, Block 16, Thiruchengode town measuring to an extent of 4.16 1/4 acres and land situated at T.S.L.R. No.39/6 (Old S.No.54/1 part, 54/2 part), Seetharampalayam Village, Ward A, Block 18, Thiruchengode town measuring to an extent of 2.26 acres under Thiruchengode Detailed Development Plan Nos. 2 and 7 is deemed to be lapsed and released from the reservation in the light of Section 38 of the Tamil Nadu Town and Country Planning Act 1971 (TN Act 1974).

For Petitioner : Mr.V.Anandhamurthy

For Respondents : Mr.N.Naveen Kumar,
Government Advocate

ORDER

This Writ Petition has been filed to declare that the reservation made in respect of the petitioner's lands comprised in T.S.L.R. No.19/1 (Old S.No.49/1, 49/2 part), T.S.L.R. No.18/1, 19/3 (Old S.No.49/2 part), Ward E, Block 16, Thiruchengode town measuring to an extent of 4.16 1/4 acres and land situated at T.S.L.R. No.39/6 (Old S.No.54/1 part, 54/2 part), Seetharampalayam Village, Ward A, Block 18, Thiruchengode town measuring to an extent of 2.26 acres under



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Thiruchengode Detailed Development Plan Nos. 2 and 7 is deemed to be lapsed and released from the reservation in the light of Section 38 of the Tamil Nadu Town and Country Planning Act 1971 (TN Act 1974).

2.The case of the petitioner is that he is the owner of the property in T.S.L.R. No.19/1 (Old S.No.49/1, 49/2 part), T.S.L.R. No.18/1, 19/3 (Old S.No.49/2 part), Ward E, Block 16, Thiruchengode town measuring to an extent of 4.16 1/4 acres and land situated at T.S.L.R. No.39/6 (Old S.No.54/1 part, 54/2 part), Seetharampalayam Village, Ward A, Block 18, Thiruchengode town measuring to an extent of 2.26 acres. 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 the place is reserved for a proposed formation of Thiruchengode local Planning Area under the detailed development plan. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3.The learned counsel appearing for the respondents has submitted a written instruction dated 01.02.2023 before this Court as follows:

1. The petitioner's land situated at old S.No.49/1 and T.S.No.19-1 of Ward - E, Block No.16 and Old S.No.49/2, T.S.No.18/1, 19/2,



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Ward - E Block No.16 in Tiruchengode Municipality.

2. The petitioner's land in Old S.F.No.49/1 and 49/2 lies in Detailed Development Plan No.2 approved under Section 29 of the Town and Country Planning Act as per DTCP Pro.Roc.No.35840/87-D2, dated 22.02.1989.
3. In Detailed Development Plan No.2, the above land is proposed for CC, C2C2, EE roads and School and Playground.
4. The petitioner's Land situated at Old S.No.54/1.2 (TS.No.39/6) Ward:A, Block - 18) in Tiruchengode Municipality.
5. The petitioner's land in Old.S.No.54/1,2 (T.S.No.39/6) lies in Detailed Development Plan No.7 approved under Section 20 of the Town and Country Planning Act as per DTCP Pro.Roc.No.41754/98 DP2, dated 05.02.2000. In Detailed Development Plan No.7, the above land is proposed as Road B1B1,CC,C2C2 Road and Park.
6. Eventhough after the Detailed Development Plan No.2 consented vide DTCP Pro.Roc.No.30280/86DP2, dated 31.12.1986 and published in TNGG dated 06.09.1989 and Detailed Development Plan No.7 consented vide DTCP Pro.Roc.No.9579/94 D2, dated 31.03.1994 and published in TNGG dated 29.11.1995 the lands



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reserved in both Detailed Development Plans were not acquired under Section 37 of the Town and Country Planning Act, 1971. The Detailed Development Plans were approved under Section 29 of the Town and Country Planning Act, 1971 and are in effect till date."

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



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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 2000. 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.



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9. Accordingly, this Writ Petition is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Neutral Citation : Yes/No.

Speaking Order / Non-Speaking Order
mps

To

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