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Writ Petition No.5765 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/2/2023

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Writ Petition No.5765 of 2023

a n d

W.M.P.No.5762 of 2023

1. N. Ponnuraj

2. C. Muruganandam

...

Petitioners

Vs

1. The State of Tamil Nadu

rep. By its Secretary

Housing and Urban Development

Fort St. George

Chennai 600 009.

2. The Director

Directorate of Town and Country Planning

E & C Market Road, Koyambedu

Chennai 107.

3. The District Collector-cum-Chairman

Udumalpet Local Planning Authority

Tirupur District Collectorate

Tiruppur District.

4. The Deputy Director

District Town and Country Planning Office

I Floor, Kumeran Commercial Complex

Tiruppur.



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5. The Member Secretary
Udumalpettai Local Planning Authority
149/263 Dhali Road
Udumalpettai 642 126.

6. The Commissioner
Udumalaipettai Municipality
149/263 Dhali Road
Udumalpettai 642 126.

7. The Sub-Registrar
Udumalaipettai
Tiruppur.

8. The District Revenue Officer
O/o. The Tiruppur District Collector
Tiruppur.

9. The Executive Officer
Kanakampalayam Town Panchayat
Udumalaipettai
Tiruppur.

...

Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents 2 to 6 to release the petitioners land situate in Tiruppur District, Udumalaipettai Taluk, Kanakkampalayam Panchayat, in S.F.No.209, Ward E, Block 18, T.S.No.12/1 part measuring 56 cents (1,656.32 sq.m) out of 78 cents (3,156 sq.m) in T.S.No.12/1, (Old Ward No.E, Block 5, T.S.No.32 (part) within Udumalaipettai Municipality from reservation which was earmarked for park in the Udumalaipettai Detailed Development Plan No.1 s



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lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and consequently, direct the respondent Nos.2 to 7 to reclassify the aforesaid land as residential land.

For Petitioners

... Mr.P.Tamilavel

For respondents

... Mr.K.M.D.Muhilan
Additional Government Pleader
for R.R.1 to 8

Mr.T.Sampath Kumar
Government Advocate
for R.9.

ORDER

This writ petition has been filed to direct the respondents 2 to 6 to release the petitioners land, situate at Tiruppur District, Udumalaipettai Taluk, Kanakkampalayam Panchayat, in S.F.No.209, Ward E, Block 18, T.S.No.12/1 part measuring 56 cents (1,656.32 sq.m) out of 78 cents (3,156 sq.m) in T.S.No.12/1, (Old Ward No.E, Block 5, T.S.No.32 (part) within Udumalaipettai Municipality from reservation which was earmarked for park in the Udumalaipettai Detailed Development Plan No.1 as lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and consequently, direct the respondent Nos.2 to 7 to reclassify the aforesaid land as residential land.



2. It is the contention of the writ petitioners that the lands of the petitioners though was approved in Detailed Development Plan No.1, the property has not been acquired till date and remains in the petitioners possession and enjoyment. Hence, it his contention that as per Section 37 of Tamil Nadu Town and Country Planning Act, 1971, the planning authority devise any plan at the disposal of any private person required for any purpose for detailed development plan, same can be acquired by the State Government by invoking the provision of the Land Acquisition Act, 1894. Whereas, Section 38 of the said Act contemplates, if such acquisition is not made within a period of three years from the date of publication of the detailed development plan, the land will be deemed to have been released from such reservation from the detailed development plan. Hence, according to him, no such acquisition has been made within a period of three years, hence, the writ petition.

3. Heard Mr.P.Tamilavel, learned counsel for the petitioners.

4. Mr.K.M.D.Muhilan, learned Additional Government Pleader for the respondents 1 to 8 and Mr.T.Sampath Kumar, learned Government Advocate for the ninth respondent.



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5. The main issue that has been urged before this Court is that the detailed development plan in G.O.Ms.No.661 dated 12.10.1994, 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 notification in Government Order, G.O.Ms.No.661 dated 12.10.1994.

6. 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 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.”

7. 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 Government Order, 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.



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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).

8. 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 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.

8. 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 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.

9. 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 it 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.



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10. Accordingly, this writ petition is allowed. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.

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E & C Market Road, Koyambedu, Chennai 107.
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