



Writ Petition No.6256 of 2023

reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently, direct the respondents to pass orders for release of petitioner's land comprised in S.F.Nos.722/1A, 722/1D1C, 731/1B, 731/1D, 732/1F and 732/2C Idikarai Village, Annur Taluk, Coimbatore, measuring about 98 ½ cents.

For Petitioner	...	Mr.Dhalapathy Vignesh Kumar
For respondents	...	Mr.S.Rajesh Government Advocate for R.R.1 to 3.

ORDER

This writ petition has been filed to direct the respondents to declare that the petitioner's land comprised in S.F.Nos.722/1A, 722/1D1C, 731/1B, 731/1D, 732/1F and 732/2C Idikarai Village, Annur Taluk, Coimbatore measuring about 98 ½ cents is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently, direct the respondents to pass orders for release of petitioner's land comprised in S.F.Nos.722/1A, 722/1D1C, 731/1B, 731/1D, 732/1F and 732/2C Idikarai Village, Annur Taluk, Coimbatore, measuring about 98 ½ cents.



2. It is the contention of the writ petitioners that their lands were initially earmarked for forming 60 feet scheme under the Coimbatore Urban Area Planning Scheme, the lands have not been acquired till date and remains in the petitioners' possession and enjoyment. Hence, it is 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.Dhalapathy Vignesh Kumar, learned counsel appearing for the petitioners 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 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.

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 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 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.

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 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.

8. 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.

9. 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.

10. 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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N. SATHISH KUMAR, J

mvs.

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

1/3/2023

Index : Yes / No

Neutral Citation: Yes/No

mvs.

To

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

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