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W.P.No.7862 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.7862 of 2023

M. Gobinath

... Petitioner

Vs.

1.The Director of Town & Country Planning,
Office of Directorate of Town & Country Planning,
Second, Third and Fourth Floors,
E & C Market Road, Koyambedu,
Chennai – 600 107.

2.The Executive Authority/Member Secretary,
Erode Local Planning Authority,
Erode Corporation, Erode.

3.The Assistant Director of Town
& Country Planning,
Erode District Town & Country Planning Office,
Erode.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring that the reservation “for E1-E1 9.1 M Road, D6-D6 12.2 M Road, D3-D3 12.2 M Road” made in the property to the extend of 10643.23 sq.mt in Old SF No.243/1, 433/1 (New RSF Nos.233/1, 233/2, 233/3 Erode Village, Erode Taluk, Erode Registration District (“Property”) forming part of Erode Local Planning



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Area (Veerappan Chatram Town Panchayat) Detailed Development Plan No.20-MAP No.3 DDP(SR)/DTCP No.152/94 which was consented by Director of Town and Country Planning under Section 25 of the Tamil Nadu Town and Country Planning Act, 1971, vide proceeding in ROC No.20002/94/DP2 dated 27.06.1994 in which a parcel of the above land was reserved for E1-E1 9.1M Road, D6-D6 12.2 M Road, D3-D3 12.2 M Road by the 1st respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the decision of this Court in the case of Kannabiran Vs. The Director of Town and Country Planning, in WP.(MD).No.8515 of 2021 dated 25.06.2021.

For Petitioner : M/s.P. Puhazh Gandhi

For Respondent : Mr.P. Sathish,
Additional Government Pleader

ORDER

Under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter called as 'the Act'), when a publication of the notice is made under Sections 26 or 27 and no declaration under Section 37 has been made within three years from the date of notification, the lands are deemed to have been released from such reservation, allotment or designation.



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2. In the instant case, the notification under Section 26 was made on 27.06.1994 and admittedly, the declaration under Section 37 has not been made till date and in view of Section 38 of the Act, the lands belonging to the petitioner herein, is deemed to have been released from such reservation, allotment or designation.

3. The prayer sought for in the present Writ Petition is for declaration that the reservation “for E1-E1 9.1 M Road, D6-D6 12.2 M Road, D3-D3 12.2 M Road” made in the property to the extent of 10643.23 sq.mt in Old SF Nos.243/1, 433/1 (New RSF Nos.233/1, 233/2, 233/3 Erode Village, Erode Taluk, Erode Registration District, as having lapsed in view of Section 38 of the Act.

4. When it is admitted by the respondents themselves that no such declaration has been made under Section 37 of the Act, the petitioner would be entitled to succeed and the prayer sought for by him in the Writ Petition, deserves consideration.



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5. In the recent order passed by this Court dated 25.01.2023 in the case of '**M. Shanmugharaj Vs. The Director of Town & Country Planning, Chennai & others**' in W.P.No.30169 of 2022, a similar view was taken in the following manner:-

“.....6. It is relevant to note that Section 38 of Tamilnadu Town and Country Planning Act, 1971, 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 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. 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 remaining area other than the layout already developed shall be released from the development plan. It is also



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made clear that in future, if the Government intends to acquire the land for any other purposes, this order will not 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 Tamilnadu Town and Country Planning Act, 1971, on its own merits, strictly in terms of the Rules.

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 Rules 4 and 5 of the Tamilnadu Town and Country Planning Act.”

6. In conformity with the aforesaid order, this Court is also of the view that though the proceedings are deemed to have been lapsed in view of Section 38 of the Act, there shall not be a bar for the authorities to pass orders, strictly in terms of the Rules and that the lapse under Section 38 of the Act, will not affect Rules 4 & 5 of the Tamil Nadu Town and Country Planning Rules.



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M.S.RAMESH, J.

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7. With the above observations, the Writ Petition stands allowed. No costs.

29.03.2023

Speaking/Non-speaking Order

Index: Yes/No

Neutral Citation: Yes/No

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To

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