



W.P.No.7220 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2023

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.7220 of 2015

M.P.No.1 of 2015

Kader Mohideen

.. Petitioner

Versus

1.The Secretary to Government,
Housing and Urban Development Department,
Government of Tamil Nadu,
Fort St.George, Chennai – 9.

2.The Senior Deputy Director of Town &
Country Planning,
Coimbatore – Nilgiris Periyar Region,
Coimbatore.

3.The District Collector,
Tirupur District.

4.The Member Secretary,
Tirupur Local Planning Authority,
Tirupur.

5.The Commissioner,
Udumalpet Municipality,
Udumalpet.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents 4 and 5 from interfering with the peaceful possession of the petitioner's properties situate in T.S.No.130, 131, 132 & 133 measuring about 6 acres north of the E.K.A.Basheer Ahamed Layout of Udumalpet Taluk, Udumalpet Sub-Registration District, Tiruppur Registration District without following the due process of law.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondents

R1 to 4 : Mrs.S.Anitha
Special Government Pleader

R5 : Mr.B.Anand

ORDER

The Writ Petition has been filed to forbear the respondents 4 and 5 from interfering with the peaceful possession of the petitioner's properties situate in T.S.No.130, 131, 132 & 133 measuring about 6 acres north of the E.K.A.Basheer Ahamed Layout of Udumalpet Taluk, Udumalpet Sub-Registration District, Tiruppur Registration District without following the due process of law.



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2. It is the contention of the writ petitioner that the lands of the petitioner though was approved in Detailed Development Plan (CN) No.9/80, the property has not been acquired till date and remains in the petitioner's 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, the 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 that, 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.I.Abrar MD Abdullah, the learned counsel for the petitioner and Mrs.R.Anitha, the learned Special Government Pleader for the respondents 1 to 4 and Mr.B.Anand, the learned counsel for the fifth respondent.



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4. The main issue that has been urged before this Court is that though the plan was approved in Detailed Development Plan (CN) No.9/80, it 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 approval of Detailed Development Plan (CN) No.9/80 dated 06.10.1980.

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



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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



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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).

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



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operation of Section 38, the reservation is released from the detailed plan.

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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 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.

Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Neutral Citation : Yes/No

Speaking Order : Yes / No

To,

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Housing and Urban Development Department,
Government of Tamil Nadu,
Fort St.George, Chennai – 9.

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N.SATHISH KUMAR, J.

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