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Writ Petition No.13586 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.13586 of 2023

M/s.Shajbas Realty (P) Ltd.,
represented by its Managing Director,
Mr.A.M.Mohammad Abbas,
S/o.A.M.Mohammed Ibrahim
residing at Door No.42, Pari Nagar,
Chungam Bypass Road,
Coimbatore - 641 045.

... Petitioner

Vs.

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

2.The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor, C and E Market Road,
Koyambedu, Chennai - 600 107.

3.The Member Secretary/Joint Director,
District Town and Country Planning Office,
Corporation Complex,
Dr.Nanjappa Road,
Coimbatore - 641 012.

... Respondents

Writ Petition filed under Article 226 of the Constitution of
India praying to issue a Writ of Mandamus directing the respondentsto



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declare that the petitioner's land comprised in T.S.No.218/4, Block No.6, Anuparpalayam Village, Central Zone, Coimbatore District, measuring about 2 acres and 11 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 respondent to pass appropriate orders for release of petitioners land comprised in T.S.No.218/4, Block No.6, Anuparpalayam Village, Central Zone, Coimbatore District measuring about 2 acres and 11 cents.

For Petitioner : Mr.M.R.Dhalapathy Vignesh Kumar

For Respondents : Mrs.S.Mythreya Chandru
Special Government Pleader

ORDER

This writ petition has been filed seeking a direction to the respondents to declare that the petitioners land comprised in T.S.No.218/4, Block No.6, Anuparpalayam Village, Central Zone, Coimbatore District measuring about 2 acres and 11 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 respondent to pass appropriate orders for release of petitioner's land.



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2. It is the contention of the writ petitioner that the petitioner is the owner of the land in T.S.No.218/4, Block No.6, Anuparpalayam Village, Central Zone, Coimbatore District measuring about 2 acres and 11 cents. Initially, the respondents earmarked the above said property for formation of 60 feet road under the Coimbatore Urban Area Planning Scheme. However, the said property has not been acquired till date and remains in the petitioner's possession and enjoyment. Hence, it is the contention of the petitioner 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, 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.M.R.Dhalapathy Vignesh Kumar, learned counsel for petitioner and Mrs.S.Mythreya Chandru, learned Special Government Pleader for the respondents.

4. The main issue that has been urged before this Court is that though the plan was approved in Detailed Development Plan (CN) No.1/1984, 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 No.1 the scheme Road in AA-100 feet and B1-B1 60 feet have been consented by the concerned authorities in the year 1984.

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 Tamil Nadu 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 2006. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed. It is made clear that in future, if the Government intends to acquire the land for any other purposes, 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 Tamil Nadu Town and Country Planning Act, 1971, on its own merits and strictly in terms of the rules.

9. It is also clear that mere releasing of the lands, as per Section



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38 of the Act 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 and 5 of Tamil Nadu Combined Development of Building Rules.

With the above observations, this writ petition is allowed. No costs.

28.04.2023

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order
gm

To

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N.ANAND VENKATESH, J



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