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W.P.No.19576 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.19576 of 2023

Thangavel

...Petitioner

Vs.

1.The Secretary

Housing and Urban Development Department,
For. St.George,
Chennai-600 015.

2.The Director of Town and Country Planning,

Office of the Directorate of Town and Country Planning
Second , third and fourth floor,
C&E Market Road,
Koyambedu
Chennai-600 107.

3.The Member Secretary

Erode Town and Country Planning Authority Office,
Chennimalai Road,
Opposite to Govt I.T.I
Erode-638 009.

..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, to declare the reservation made in respect of the property in R.S.No.77/1B in Punjailakkapuram village, Modakkurichi



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Taluk, Erode District forming part of Punjailakkapuram Detailed Development Plan No.7 to have lapsed, in view of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioner :Mr.M.Guru Prasad

For Respondents :Mr.C.Selvaraj
Additional Government Pleader

ORDER

The petitioner herein seeks declaration that the reservation made in respect of the property in R.S.No.77/1B in Punjailakkapuram village, Modakkurichi Taluk, Erode District forming part of Punjailakkapuram Detailed Development Plan No.7 has lapsed by operation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

2. The petitioner purchased 4030 Sq.ft of land in R.S.No.77/1B in Punjailakkapuram village, Modakkurichi Taluk, Erode District under registered sale deed dated 17.06.2022. The petitioner has been in possession and enjoyment of the above said property by mutating revenue records.



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3. The Government of Tamil Nadu proposed a scheme road in C3-C3 30 feet road in Punjailakkapuram Detailed Development Plan in the year 2005 vide proceedings in R.O.C.No.77/2005/ELPA. The above said property purchased by petitioner forms part of the land reserved for proposed scheme road in C3-C3 30 feet road in the detailed development plan referred above.

4. The learned counsel for the petitioner submits that the above said detailed development plan was approved by Commissioner of Town and Country Planning on 16.04.2008 vide his proceedings in ROC.No.7208/2006/DP1. It is also submitted that even after the lapse of 15 years, no acquisition proceedings have been initiated in respect of the above said lands and therefore, by operation of Section 38 of Tamil Nadu Town and Country Planning Act, the reservation got lapsed.

5.Mr.C.Selvaraj, learned Additional Government Pleader for the respondents on written instructions submits that C3-C3 30 feet road in Punjailakkapuram Detailed Development Plan has been approved by Commissioner of Town and Country Planning on 16.04.2008 and thereafter,



no acquisition proceedings have been initiated in respect of the lands reserved for the C3-C3 30 feet road which passes through Punjailakkapuram village.

6. In view of the said submission made by the learned Special Government Pleader for the respondents, this Court proceeds to consider the request of the petitioner.

Section 38 of Tamil Nadu Town and Country Planning Act, 1971 which reads as follows:-

“38. Release of land.- If within five 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 made in respect of any land reserved, allotted or designated for any purpose specified in a Regional Plan, Master Plan, [Detailed Development Plan, New Town Development Plan or a Land Pooling Area Development Scheme] 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”.



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Provided that the Government may, by notification, extend the period for such time as they may think proper, but such extended period shall, in no case, exceed five years.

7. A perusal of the above said provision would suggest if no acquisition proceedings is initiated in respect of the land reserved, allotted or designated for any purpose specified in the detailed development plan within a period of five years or within the extended period, the reserved land deemed to be released from reservation.

8. It is not the case of the respondent that the time was extended by invoking the proviso to Section 38. Even otherwise the detailed plan was approved on 16.04.2008. As per the proviso to Section 38, the extension can be given only for a maximum period of five years.

9. In the case on hand, nearly 15 years have lapsed from the date of approval of the detailed plan. In such circumstances, the petitioner is entitled to declaration as prayed for.



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S.SOUNTHAR, J.

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

09.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
nr

To

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