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W.P.No.23851 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.08.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.23851 of 2023

and

W.M.P.No.23366 of 2023

1.M/s.ESSA Garments Private Ltd.,
Represented by its Director
S.Sumaya Begum
No.21, Venkatesaiya Colony
Kangeyam Road,
Tiruppur 641 604.

2.M.Sasikala

...Petitioners

Vs.

1.The Director of Town and Country Planning,
Office of Directorate of Town and Country Planning,
Second, third and fourth floors,
E& C Market Road,
Koyambedu, Chennai-600 107.

2.The Member Secretary,
Tiruppur Local Planning Authority,
1st floor, Kumaran Commercial Complex,
Tiruppur-641 601.

3.The Commissioner



Tiruppur Municipal Corporation
Tiruppur.

..Respondents.

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of declaration, to declare that the property comprised in Old T.S.No.5/1A1A, New T.S.No.27 presently New T.S.No. 26pt, 27/1, 27/2 of Tiruppur Municipal Corporation, totally measuring to an extent of 11169.40 situated at Tiruppur Corporation, Tiruppur South Taluk, Tiruppur District(property) forming part of MAP.No.5, DDP(V) DTCP No.24/2012 vide proceeding ROC.No.15124/2012 DDP2 dated 09.11.2012 which was approved by the Commissioner of Town and Country Planning, the 1st respondent for the purpose of forming the D12-D12, 40 feet road, E9-E9, 30 feet road and E10-E10, 30 feet road and the same has been published in the Tamil Nadu Government Gazette on 12.12.2012 in Part VI Section I by the 1st respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning, Act, 1971 (TC Act 35 of 1974) and the decisions of this Court in W.P.(MD).No.8515 of 2021 dated 25.06.2021, W.P.No.106 of 2022 dated 07.01.2022, W.P.(MD).No.424 of 2022 dated 14.03.2022, W.P.No.538 of 2022 dated 19.01.2022, W.P.Nos.4948, 4951 & 4406 of 2022 dated 30.03.2022, W.P.No.30169 of 2022 dated 25.01.2023, W.P.No.7862 of 2023 dated 29.03.2023, W.P.No.11410 of 2023 dated 13.04.2023, W.P.No.12484 of 2023 dated 24.04.2023, W.P.No.17284 of 2023 dated 12.06.2023 and W.P.No.19532 of 2023 dated 30.06.2023.

For Petitioner

:Mr.P.Tamilmani



W.P.No.23851 of 2015

For Respondent 1

: Mr.J.Ravindran
Additional Advocate General-IX
Assisted by Mrs.S.Anitha
Special Government Pleader

For respondent 2 & 3

: Mr.Abishek Murthy
Standing Counsel

ORDER

The petitioner herein seeks issuance of a writ of declaration to declare that the property comprised in Old T.S.No.5/1A1A, New T.S.No.27 presently New T.S.No. 26pt, 27/1, 27/2 of Tirupur Municipal Corporation, totally measuring an extent of 11169.40 situated at Tiruppur Corporation, Tiruppur South Taluk, Tiruppur District(property) forming part of MAP.No.5, DDP(V) DTCP No.24/2012 vide proceeding ROC.No.15124/2012 DDP2 dated 09.11.2012 which was approved by the Commissioner of Town and Country Planning, the 1st respondent for the purpose of forming the D12-D12, 40 feet road, E9-E9, 30 feet road and E10-E10, 30 feet road published in the Tamil Nadu Government Gazette on 12.12.2012 has lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning, Act, 1971.

2. It is the case of the petitioners that the 1st petitioner herein purchased



a property measuring an extent of 11169.40 Sq.m from the 2nd petitioner herein vide registered sale deed dated 16.05.2022 and the 1st petitioner has been in possession and enjoyment of the said property from the date of purchase. When the 1st petitioner wanted to develop the above mentioned property, he was informed by the respondents that above mentioned property falls within the designated area in Tiruppur detailed development plan-18 approved by the 1st respondent on 12.12.2012. It is the specific case of the petitioner that though the detailed development plan was approved as early as on 12.12.2012, no acquisition proceedings have been initiated for acquiring above mentioned land, which was reserved for D12-D12 40 feet road, E9-E9 30 feet road and E10-E10, 30 feet road in the detailed development plan.

3. The learned counsel for the petitioner by relying on Section 38 of Tamil Nadu Town and Country Planning, Act, 1971 submits that since 10 years have gone from the date of approval of the detailed development plan, the reservation made under the detailed development plan has elapsed.

4. The learned Special Government Pleader for the 1st respondent on



written instructions submits that a master plan for the above said area has been prepared by the Department as early as on 31.12.2013 itself and the above said scheme roads have been incorporated in the master plan which is in the draft consent stage. It is also stated by the learned Special Government Pleader that acquisition proceedings will be initiated within a stipulated time.

5. Mr.Abishek Murthy, learned counsel for the 2nd and 3rd respondents submits that the property was inspected by the officials of the 2nd respondent authority on 18.08.2023 and the land of the 1st petitioner found to be vacant. The learned counsel further submits that the master plan for the area will be prepared by September 2023.

6. Though the matter came up before this Court on 14.08.2023, 18.08.2023 and till date, no counter have been filed by the respondents. However, on written instructions, the learned counsel for the 1st respondent submits that a master plan was already prepared and it is pending in draft consent stage. As far as the issue raised by the learned counsel for the petitioners is concerned, the lands were included in the area reserved for D12-



D12 40 feet road, E9-E9 30 feet road and E10-E10 30 feet road in the detailed development plan approved as early as 12.12.2012. Therefore, now 10 years have gone from the date of approval.

Section 38 of Tamil Nadu Town and Country Planning Act, 1971 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”.

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 make it clear that if no



acquisition proceedings is initiated in respect of any land reserved, allotted or designated for any purpose specified in the detailed development plan, such land will get automatically released from such reservation or allotment or designation. The respondents have not produced any materials to show any acquisition proceedings initiated in respect of petitioner's land.

8. A proviso to Section 38 empowers Government to extend the time limit by another five years. In the case on hand, no such extension has been granted by the Government. Even assuming such extension is given, that period would have been over as 10 years have already lapsed from the date of approval of the earlier detailed development plan. Therefore, there is no difficulty in coming to the conclusion that the lands of the petitioner reserved for specific road in the detailed development plan got released by operation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

9. In view of the discussions made earlier, the petitioners are entitled to declaration as prayed for. Accordingly, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.



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10. It is needless to say that allowing of this writ petition will not prevent the respondents from preparing or approving new master plan or new detailed development plan in accordance with law.

22.08.2023

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

To

1.The Director of Town and Country Planning,
Office of Directorate of Town and Country Planning,
Second, third and fourth floors,
E& C Market Road,
Koyambedu, Chennai-600 107.

2.The Member Secretary,
Tiruppur Local Planning Authority,
1st floor, Kumaran Commercial Complex,
Tiruppur-641 601.

3.The Commissioner
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Tiruppur.

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