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W.P.No.24148 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.24148 of 2023

Elakkiyaselvi

... Petitioner

VS.

1.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai-600015.

2.The Director of Town & Country Planning
Office of the Directorate of Town and Country Planning
Second, Third and Fourth Floor,
C&E Market Road,
Koyambedu
Chennai-600107.

3.The Member Secretary,
Erode Town and Country Planning Authority Office
Chennimalai Road
Opposite to Govt I.T.T,
Erode-638009.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the reservation made in



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respect of the properties in old S.No.140/1 having R.S.No.172/1 and 172/5, Plot No.11 (RTO Nagar) in Punjailakkapuram Village, Modakkurichi Taluk, Erode District forming part of Punjailakkapuram Detailed Development Plan No.4 to have lapsed, in view of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 by appreciating the above stated facts.

For Petitioner : Ms.R.Vigneshwari
for Mr.M.Guruprasad

For Respondents : Mrs.S.Anitha
Special Government Pleader

ORDER

The petitioner seeks issuance of a Writ of Declaration, declaring that the reservation made in respect of the properties in Old S.No.140/1 having R.S.Nos.172/1 and 172/5, Plot No.11 (RTO Nagar) in Punjailakkapuram Village, Modakkurichi Taluk, Erode District forming part of Punjailakkapuram Detailed Development Plan No.4 have lapsed in view of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.



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2. According to the petitioner, she is owner of the land measuring to an extent of 1050 sq.ft., in Old S.No.140/1 having R.S.Nos.172/1 and 172/5 situated at Plot No.11 (RTO Nagar) in Punjailakkapuram Village, Modakkurichi Taluk, Erode District. The said property was purchased by her from one P.Sundaram under the Registered Sale Deed dated 25.05.2023. The petitioner has been possession and enjoyment of the property from the date of purchase of the same.

3. The above said property was included in the Punjailakkapuram Detailed Development Plan No.4 approved during December, 2009. As per the Detailed Development Plan, a Scheme Park was proposed and property of the petitioner falls within the proposed Scheme Park in the Detailed Development Plan.

4. The learned counsel appearing for the petitioner by taking this Court to the averment found in the affidavit filed in support of the writ petition, submitted that though Detailed Development Plan was approved as early as December, 2009, till date no acquisition proceedings have been initiated as provided under Section 37(2) of the Tamil Nadu Town and



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Country Planning Act, 1971 in respect of the above mentioned reserved lands. Therefore, by operation of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the above mentioned reserved lands got released.

5. Mr.J.Ravindran, learned Additional Advocate General-IX appearing for Mrs.S.Anitha, learned Special Government Pleader for respondents submitted that no acquisition proceedings have been initiated in respect of the above mentioned lands of the petitioner.

6. Section 38 of the 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 acquisition of land 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



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(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 reading of the above provision would make it clear that if no acquisition proceedings is initiated or the land is not acquired by agreement within five years from the date of approval of the Detailed Development Plan by operation of law, the land reserved/allotted or designated for specific purpose under Detailed Development Plan will get automatically released.

8. As per proviso to Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the Government has got power to extend the period by another five years. However, in the case on hand, it is not the case of the respondents that by invoking proviso, the Government has extended time. Even otherwise, nearly 14 years have gone from the date of approval of the Detailed Development Plan. Therefore, even assuming that the proviso was



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invoked, even that period is also over. In such circumstances, there is no difficulty in coming to the conclusion that above mentioned lands of the petitioner, which were reserved for proposed Scheme Park under the Detailed Development Plan got released by operation of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

9. Accordingly, the writ petition stands allowed. No costs.

31.08.2023
(2/3)

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
dm



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S.SOUNTHAR, J.

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