



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.30169 of 2022

M. Shanmugharaj

... Petitioner

Vs.

1.The Director of Town & Country Planning,
Office of Directorate of Town & Country Planning,
Second, Third and Fourth Floors,
E & C Market Road,
Koyambedu, Chennai – 600 107.

2.The Executive Authority / Member Secretary,
Udumalaipettai Local Planning Authority,
Udumalaipettai Municipality,
Udumalaipettai.

3.The Assistant Director of Town & Country Planning,
Tiruppur District Town and Country Planning Office,
Kumaran Commercial Complex, First Floor,
Tiruppur – 641 601.

4.The Land Acquisition Officer,
Tiruppur.
Respondents

...

Prayer: Writ petition is filed under Article 226 of the Constitution of India for



issuance of a Writ of Declaration, to declare that the property to an extent of 7.04 acres in Ward-A, Block-1, TS No.15 part, Udumalaipet Taluk, Udumalaipet Municipality (“Property”) forming part of Udumalaipet Detailed Development Plant No.8, delineated in Map No.3 in DDP(CR)/DTCP No.31/92, which was consented to by the Director of Town and Country Planning under Section 25 of the Tamil Nadu Town and Country Planning Act, 1971 vide proceeding Roc No.361 54/91/DP3 dated 15.07.1992, for construction of “Elementary School, High School and Play Ground, BB-60 feet road, B3B3-60 feet road and C12C12,” by the 1st respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act (TN Act 35 of 1974) and the decision of this Court in the case of Kannabiran Vs. The Director of Town and Country Planning, in W.P(MD) No.8515 of 2021 dated 25.06.2021.

For Petitioner : Mr. P. Puhazh Gandhi

For Respondents : Mr. V. Nanmaran, for RR1, 3 & 4
Additional Government Pleader
Mr. B. Anand, for R2

ORDER

The Writ Petition has been filed for a declaration to declare that the property to an extent of 7.04 acres in Ward-A, Block-1, TS No.15 part, Udumalaipet Taluk, Udumalaipet Municipality (“Property”) forming part of Udumalaipet Detailed Development Plant No.8, delineated in Map No.3 in DDP(CR)/DTCP No.31/92, which was consented to by the Director of Town and Country Planning under



Section 25 of the Tamil Nadu Town and Country Planning Act, 1971 vide proceeding Roc No.361 54/91/DP3 dated 15.07.1992, for construction of “Elementary School, High School and Play Ground, BB-60 feet road, B3B3-60 feet road and C12C12,” by the 1st respondent herein, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

2. It is the contention of the writ petitioner that the lands of the petitioner though was approved in Detailed Development Plan No.8, 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, 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. The counter has been filed by the respondents. According to the respondents after the land in question was reserved for construction for elementary School, High School and Playground by the petitioner, as per proceedings of the 3rd respondent bearing Na.Ka.No.904/2019/thee.ma-1/dated 06.11.2019 and Ma.Va(Regularisation) Na.Vu (thee.ma)N o.30/2019 the petitioner sold the said property to 71 persons. Further in the said property part of B-B 60 feet wide Scheme road, B3-B3-60 feet wide Scheme road, C12-C12-40 feet wide scheme road and the park area was gifted by the petitioner through gift deed bearing Doc.No:10974/2019 to this respondent to form a park. When this respondent sought for clarification with regard to said proceedings the respondent informed that the said proceedings weren't issued to this respondent. Further the petitioner has sold a portion of the land included in the detailed Development Plan No.8 to the third party. The petitioner having alienated the properties to 71 persons and also gifted portion of the property to this respondent and sold to a private party, he is not owner of the entire property in question. The petitioner is not entitled to Relief of Declaration as claimed in the Writ Petition.

4. Learned counsel for the petitioner would submit that only an extent of 4.85 acres have been developed as a layout. While developing the layout,



necessary lands have been gifted by gift deed bearing No.10974/2019. According to him, as far as the land already gifted in respect of a layout forming 4.85 acres, he is not claiming any right over the gifted properties. Only he seeks the declaration in respect of the remaining properties as the acquisition has not happened within a period of three years, as contemplated under Section 38 of Tamilnadu Town and Country Planning Act, 1971.

5. Learned counsel for the respondents would submit that since the lands have already been gifted, the petitioner cannot have any right over the property. The entire extent of 7.04 acres was shown in a detailed development plan No.8 of the respondents for the purpose of constructing Elementary School, High school and Play ground. Though the declaration has been made on 15.07.1992, the land has not been acquired within a period of three years.

6. It is relevant to note that Section 38 of Tamilnadu Town and Country Planning Act, 1971, 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



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provided in sub-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. 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 remaining area other than the layout already developed 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 other purposes, this order will not bar for the Government in view of the provision of Land Acquisition Act. Similarly, any application is filed or pending for regularisation 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.

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 Rules 4 and 5 of the Tamilnadu Town and Country Planning Act.

9. With the above observations, the Writ Petition is allowed. However, there shall be no order as to costs.

25.01.2023

Index :Yes/No
Speaking Order / Non-Speaking Order
AT



To

1. The Director of Town & Country Planning,
Office of Directorate of Town & Country Planning,
Second, Third and Fourth Floors,
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Koyambedu, Chennai – 600 107.
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W.P.No.30169 of 2022

N.SATHISH KUMAR, J.

This Writ Petition has been listed today at the instance of the learned Additional Government Pleader appearing for the first respondent under the caption 'for being mentioned'.

2. Mr.K.M.D.Muhilan, learned Additional Government Pleader would submit that instead of Res 4 and 5 of Tamilnadu Town and Country Planning Act mentioned at the end of the 8th para, it is has to be mentioned as ' Rule 4[5] of Tamil Nadu Regularization of Unapproved Layouts and Plot Rules, 2017. It is his further submission that 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.

3. In view of the above submissions, instead of 7th and 8th paragraphs in the Order dated 25.01.2023, the following paragraphs shall be incorporated in the Order.

“7. 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



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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.

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.”

4. The registry is directed to above paragraphs in the above Order and issue fresh Order copy to the parties concerned.

24.02.2023

vrc



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