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W.P.No.26695 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.26695 of 2023

G.Bharani

...Petitioner

Vs.

- 1.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 015.
- 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 – 600 107.
- 3.The Member Secretary,
Erode Town and Country Planning Authority Office,
Sampath Nagar,
Backside to Farmer's Market,
Erode – 638 011

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare the reservation made in respect of the properties in R.S.No. 62/3, Plot No. 18 & 19 in Punjailakkapuram Village, Modakkurichi Taluk, Erode District forming part of Punjailakkapuram



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Detailed Development Plan No. 7 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.Shase
for M.Guruprasad

For Respondents : Mrs.S.Anitha
Special Government Pleader

ORDER

The petitioner herein seeks issuance of Writ of Declaration, declaring that the reservation made in respect of the property in R.S.No. 62/3, Plot Nos. 18 & 19 in Punjailakapuram Village, Modakkurichi Taluk, Erode District forming part of Punjailakapuram Detailed Development Plan No. 7 has lapsed, in view of Section 38 of the Tamil Nadu Town and Country Planning act, 1971.

2. According to the petitioner, she is the owner of the properties measuring to an extent of 3366 $\frac{3}{4}$ sq. ft. in R.S.No.62/3, Plot Nos. 18 & 19 in Punjailakapuram Village, Modakkurichi Taluk, Erode District. The petitioner had purchased the subject properties from one V.Gobinath and M.Karthik



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under the Registered Sale Deed dated 23.01.2023. The petitioner has been in possession and enjoyment of the properties from the date of purchase of the same.

3. The above said properties were included in the Punjailakkapuram Detailed Development Plan No.7 approved during 2005. As per the Detailed Development Plan, the B2-B2 40 feet Scheme Road was proposed and properties of the petitioner fall within the proposed Scheme Road 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 the Detailed Development Plan was approved as early as 2005, till date no acquisition proceedings have been initiated as provided under Section 37(2) of the Tamil Nadu Town and 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.



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5. Mrs.S.Anitha, learned Special Government Pleader for the respondents is unable to show before this Court any notification issued by the respondents for acquisition of lands in respect of formation of Scheme Road, till date.

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

(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.]”



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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. The petitioner also enclosed the Detailed Development Plan No.7 in the typed set of papers. A perusal of the same would suggest that the Detailed Development Plan No.7 was approved by the Commissioner of the Town and Country Planning as early as 16.04.2008, more than 15 years have gone from the date of approval of the Detailed Development Plan. Therefore, even assuming that the proviso was 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 Road under the



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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.

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Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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