



W.P.No.33802 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.33802 of 2022
and W.M.P.No.33300 of 2022

1.T.R.Murugesan
2.V.Ramabhadra Raju

.. Petitioners

Versus

1.The Director,
Tamil Nadu Town and Country Planning,
2nd, 3rd and 4th Floor,
C & E Market Road,
Koyambedu,
Chennai – 600 107.

2.The District Collector,
Thiruvallur District,
Chinna Ekkadu,
Jaya Nagar,
Thiruvallur – 602 001.

3.The Commissioner,
Thiruvallur Municipality,
J.N.Road, SH-57,
Thiruvallur – 602 001.

4.The Assistant Director,
Directorate of Town & Country Planning,
Thiruvallur – 602 001.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to release the petitioners land comprised in Survey No.633/1, presently Survey No.633/1B2, measuring about 10 cents, situated in Periakuppam Village, Tiruvallur Taluk, Tiruvallur District, which was earmarked for the 60 Feet Scheme Road under Rajajipuram Part I Town Planning Scheme as it is 'deemed to be lapsed' under Section 38 of Tamil Nadu Town and Country Planning Act, 1971, by considering the petitioner's representation dated 03.11.2022.

For Petitioners : Mr.R.Jayaprakash

For Respondents

For RR1, 2 & 4 : Mr.S.Rajesh
Government Advocate

For R3 : Mr.P.Srinivas

ORDER

The Writ Petition has been filed to direct the respondents to release the petitioners land comprised in Survey No.633/1, present Survey No.633/1B2, measuring about 10 cents, situated in Periakuppam Village, Tiruvallur Taluk, Tiruvallur District, which was earmarked for a 60 Feet Scheme Road under Rajajipuram Part I Town Planning Scheme as it is



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'deemed to be lapsed' under Section 38 of Tamil Nadu Town and Country Planning Act, 1971, by considering the petitioner's representation dated 03.11.2022.

2. The grievance of the writ petitioners is that the lands of the petitioners comprised in Survey No.633/1, present Survey No.633/1B2, measuring about 10 cents, situated at Periakuppam Village, Tiruvallur Taluk, Tiruvallur District, though was earmarked for 60 Feet Scheme Road under Rajajipuram Town Planning Scheme Part 1, Tiruvallur Local Planning Area and the said property has not been acquired till date and remains in the petitioners 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, the 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



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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. Learned counsel for the petitioners would submit that only an extent of 10 cents was earmarked for 60 Feet Scheme Road Under Rajajipuram Town Planning Scheme Part I of Tiruvallur Local Planning Administration Department dated 16.12.1969, later, which was entirely varied as Rajajipuram Detailed Development Plan I of Tiruvallur Local Planning Authority, approved in the proceedings No.ROC.No.13715/2000/DPI dated 17.11.2002. The Detailed Development Plan has been made vide Newspaper publication dated 16.04.2003, vide ROC.NO.6/99/F1 (Na.Ka.No.268/Se.Ma.Tho.A/2003 dated 24.4.2003. He further submitted that there was no steps taken beyond the said notification towards acquisition of land property and therefore, in accordance with the provision under Section 38 of Tamil Nadu Town and Country Planning Act, 1971(Act), the subject land/property was deemed to be released as on 18.12.2005. Therefore, it is not possible to form the road as per the proposed Detailed Development Plan of the year 2002. The reservation of

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public spaces such as parks, playgrounds, roads, etc., under the Detailed Development Plan made as per Section 29, have now lapsed in view of the time period set out under Section 38 of the Act.

4. Learned counsel for the respondents would submit that since the lands have already been gifted, the petitioners cannot have any right over the property. The entire extent of 10 cents was shown in a detailed development plant No.1 of the respondents for the purpose of laying 60 Feet Scheme Road Under Rajajipuram Town Planning Scheme Part I of Tiruvallur Local Planing Administration Department. Though the declaration has been made on 18.12.2002, the land has not been acquired within a period of three years.

5. 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 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.”

6. 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, if any application is filed or pending for regularization of unapproved layout, such application shall be dealt as per Regularization of Unapproved Plots and Layouts Rules, 2017, on its own merits, strictly in terms of the Rules.



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7. 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(5) of the Tamilnadu Town and Country Planning Rules.

8. With the above observations, the Writ Petition is allowed.
No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No



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N.SATHISH KUMAR, J.

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