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W.P.No.33727 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.33727 of 2022

K.P.Arumugam

...Petitioner

Vs.

1.The State of Tamil Nadu rep.
By its Secretary to Government,
Department of Housing and Urban
Development,
Fort St.George,
Chennai-600 009.

2.The Commissioner,
Directorate of Town and Country Planning,
807, Anna Salai,
Chennai-2.

3.The Member Secretary/ Assistant Directorate
Kurichi New Town Development Scheme,
Corporation Complex, 2nd floor,
Dr.Nanjappa Road,
Coimbatore-641 018.

..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Certiorarified mandamus, calling for the records relating



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to the impugned orders in Lr.No.6676/UDA(2)2021-5, dated 22.11.2022 passed by the 1st respondent confirming the order in Na.Ka.No.4713/2018/LA2 dated 16.10.2018 passed by the 2nd respondent, quash the same and consequently, direct the respondents to grant plan approval for the 28 unapproved house sites in petitioner's layout after deleting the proposed B1-B1 scheme road in the Kurichi New Town Development Plan approved in G.O.No.327 dated 14.03.1995 and pass further orders.

For Petitioner	:Mr.N.Manokaran
For Respondents	:Mrs.S.Anitha Special Government Pleader

ORDER

The writ petition is filed challenging the order passed by the 1st respondent confirming the order passed by the 2nd respondent rejecting the application submitted by the petitioner for approval of 28 unapproved house sites on the ground that those house sites falls within the area earmarked for B1-B1 scheme road in Kurichi New Town Development Plan.

2. According to the petitioner, the Kurichi New Town Development Plan was approved in G.O.No.327, Housing and Urban Development Department



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dated 14.03.1995. The said scheme was revisited and fresh approval for the scheme was given in G.O.No.172, Housing and Urban Development Department dated 13.07.2006.

3. The learned counsel for the petitioner by taking this Court to Section 38 of Tamil Nadu Town and Country Planning Act, 1971 submitted that if the land reserved or allotted for a specific purpose in a new development plan is not acquired within five years, the same is deemed to be released. In the case on hand, when the application of the petitioner was considered by the 2nd respondent on 16.10.2018, nearly 12 years have elapsed from the date of approval of the Development Scheme dated 13.07.2006. Therefore, the 2nd respondent without taking into consideration under Section 38 of Tamil Nadu Town and Country Planning Act, 1971, the land in question got released, on an erroneous view rejected the application for approval of the unapproved plots. The said order was simply confirmed by the 1st respondent without taking into consideration the impact of Section 38.



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4. In support of his contentions, the learned counsel for the petitioner relied on the following case laws:-

(1) 2010 (2) CTC 510 in the case of V.Nagamani and another Vs 1.The Director of Town and Country Planning, Chennai 2.The Commissioner, Madurai Corporation, Madurai 3.The Member Secretary, the Madurai Local Planning Authority, Madurai.

(2) 2014 (6) CTC 60 in the case of S.Kanagam and others Vs 1.The Director, Town and Country Planning, 807, Anna Salai, Chennai 2.The Joint Director, Town and Country Planning, Dr.Nanjappa Road, Coimbatore-641 018. 3.The Commissioner, Pollachi Municipality, Pollachi, Coimbatore District.

(3) MANU/TN/3335/2016 in the case of S.Anand Vs The Secretary, Housing and Urban Development Department and Others.

5. The learned Special Government Pleader for the respondents by taking this Court to the averments found in the counter submitted that



unapproved plots in respect of which the petitioner has filed the application are coming within an area earmarked for proposed BI-BI 80 feet scheme road in approved Kurichi New Town Development Plan. Therefore, 1st and 2nd respondents rightly rejected the application made by the petitioner.

6. A reading of the impugned order passed by the 2nd respondent would make it clear that the request made by the petitioner for approval of the plots was rejected mainly on the ground that the plots in question falls within the area earmarked for scheme road included in the proposed Kurichi New Town Development Plan.

7. In the impugned order, the 2nd respondent also referred to the G.O.No.172, Housing and Urban Development Department dated 13.07.2006 where under, the developmental plan was approved.

8. In view of the admitted position the developmental plan was approved on 13.07.2006 and also the fact that no steps have been initiated so far to acquire the lands earmarked for the proposed road mentioned in the



developmental plan, by operation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971, the lands earmarked for proposed road got released.

9. In this regard, it would be appropriate to refer to the order passed by this Court reported in **2010 (2) CTC 510** in the case of ***V.Nagamani and another Vs 1.The Director of Town and Country Planning, Chennai 2.The Commissioner, Madurai Corporation, Madurai 3.The Member Secretary, the Madurai Local Planning Authority, Madurai.*** In that order, the learned Judge has held in para 11 as follows:-

“11.Mr.M.Ajmal Khan, the learned counsel appearing for the petitioners submitted that admittedly, initial notice was made in the year 1991 and as no action has been taken within three years, the Government has to release the land from the acquisition as per the Section 38 of the Act. Mr.M..Ajmal Khan, the learned counsel appearing for the petitioners also relied upon two judgments reported in 2008(2) MLJ 184 and 2008(8) MLJ 994 in support of his contention. In the reported judgment



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rendered in 2008(2) MLJ 994 the learned Judge after

considering the various provisions of the Tamil Nadu Town and Country Planning Act, 1971, set aside the impugned order, by invoking the provisions of 38 of the Tamil Nadu Town and Country Planning Act. In that judgment, the learned Judge has held in para 26 as follows:

"Considering Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 which deems the release of property in the event of not acquiring within the stipulated time of three years as per proviso to Section 37(2), based on the overall scheme and object of the Act and also on the factual circumstances, when the authority, viz., the Trichy Corporation has categorically decided that due to want of funds, there is no proposal to acquire the same, there is no difficulty to come to the conclusion that the deemed provisions comes into effect automatically."

Therefore, having regard to the fact that no steps have been taken by the respondents as provided



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in that Act, either to acquire the land or make publication within three years from the date of initial notification. As per the deeming provision of Section 38, the lands are deemed to have been released from the acquisition and hence, the respondent cannot reject the approval on the ground that the land has been included in the 100 Feet AA Road Scheme”.

10. Subsequent to above order, Section 38 of above said Act was amended and period of three years had been enhanced to five years. A proviso was also added enabling Government to extend the period by notification up to a period of five years. In the case on hand when order of rejection was passed by 2nd respondent, twelve years period had elapsed from the date of approval of Kurichi New Town Development Scheme by Government.

11. Therefore, the 2nd respondent as well as the 1st respondent are not justified in rejecting the request of the petitioner on the ground that the plots in question fall within the area earmarked for proposed road. Hence, the impugned orders are set aside and the 2nd respondent is directed to consider the application of the petitioner for approval of the plots in question in accordance



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with law and pass necessary orders within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above directions, this writ petition is disposed of. No costs.

02.08.2023

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

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S.SOUNTHAR, J.

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