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W.P.No.33826 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.33826 of 2023

N.Devaraj

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Petitioner

versus

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 Member Secretary,
Tirupur Local Planning Authority,
1st Floor, Kumaran Commercial Complex,
Tirupur - 641 601.

3.The Commissioner,
Tirupur Municipal Corporation,
Tirupur.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the properties in Old Survey No.105/1, as per patta No.7089-New Survey No.105/1B measuring to an extent of 5.94 cents or 2980 Sq.ft, (0.2.77 Hectares) and Patta No.7390 New Survey No.105/1C measuring to an extent of acre 0.40 $\frac{3}{4}$ cents, (0.16.50 Hectares) totally measuring to 0.475 acre situated at Velampalayam



Village, Tirupur North Taluk, Tirupur District (property) forming part of MAP No.4 & 5, DDP (C.R)/DTCP No.07/2015 vide proceeding in Roc.No.13717/08 DP2 dated 30.09.2015 for Tirupur Local Planning Area, Velampalayam Detailed Development Plan No.10 which was approved by the Director of Town and Country Planning-the first respondent for forming of the C-C 12.2 M Road for Public purpose, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the various decisions of this Hon'ble Court in W.P.(MD) No.8515 of 2021 dated 25.06.2021, W.P.No.106/2022 dated 07.01.2022, W.P.No.538/2022 dated 19.01.2022, W.P.No.1466/2022 dated 04.02.2022, W.P. (MD)No.424/2022 dated 14.03.2022, W.P.Nos.4948, 4951 & 4406/2022 dated 30.03.2022, W.P.No.30169/2022 dated 25.01.2023, W.P.7862/2023 dated. 29.03.2023, W.P.No.11410 of 2023 dated 13.04.2023, W.P.No.12484/2023 dated 24.04.2023, W.P.No.17284/2023 dated 12.06.2023, W.P.No.19532/2023 dated 30.06.2023 and W.P.23851/2023 dated 22.08.2023.

For Petitioner	:	Mr.P.Tamilmani
For Respondent Nos.1 & 2	:	Mrs.C.Meera Arumugam Additional Government Pleader
For Respondent No.3	:	Mr.Abishek Murthy



ORDER

This Writ Petition has been filed for issuance of a Writ of declaration, declaring the properties in Old Survey No.105/1, New Survey No.105/1B measuring to an extent of 5.94 cents and New Survey No.105/1C measuring to an extent of acre 0.40 ³/₄ cents, situated at Velampalayam Village, Tirupur North Taluk, Tirupur District, earmarked as C-C 12.2 M Road for the public purpose in Velampalayam Detailed Development Plan No.10, in view of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

2. The case of the petitioner is that the properties in Old Survey No.105/1 and New Survey Nos.105/1B and 105/1C situated at Velampalayam Village, Tirupur North Taluk, Tirupur District, originally belong to the petitioner's predecessor. While so, a proposal was established in the name of 'Detailed Development Plan' for Velampalayam Village. The Government has notified the same through Gazette notification as Velampalayam Detailed Development Plan No.10. On such notification, the Government had notified/reserved the lands in Old Survey No.105/1 and New Survey No.105/1B measuring to an extent of 5.94 cents and New Survey No.105/1C measuring to an extent of acre 0.40³/₄ cents situated at Velampalayam Village, Tirupur North Taluk, Tirupur District out of 0.475



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acres. Once the Detailed Government Plan comes into operation, the Government has to acquire the land under Section 36 of the Tamil Nadu Town and Country Planning Act and appropriate compensation has to be provided under Section 39 of the Tamil Nadu Town and Country Planning Act, within the period of three years. Even after lapse of ten years, till today no acquisition has been made. Therefore, the present case falls under Section 38 of the Tamil Nadu Town and Country Planning Act. Hence, the lands in Old Survey No.105/1 and New Survey Nos.105/1B and 105/1C are deemed to be released.

3. The learned counsel appearing for the petitioner has relied on a decision of this Court in W.P.(MD).No.10659 of 2012, dated 10.12.2012. The relevant portion of the order reads as follows:-

“8. In this regard, useful reference could made to a decision reported in (2008) 2 MLJ 184 (K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another), wherein it has been held as follows:-

“9. On the facts and circumstances of the present case, the petitioners have clearly stated in the affidavit, that even under the old Act VII of 1920, no steps were taken for the



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purpose of completing the acquisition within three years and the same has not been denied in the counter affidavit filed by the first respondent. Even assuming that the said Scheme has been taken over under the Act 35 of 1972, even from the date of coming into effect of the Act within the period stipulated under Section 38, no steps have been taken by the respondents for acquiring the property for the purpose of “open space” stated to have been reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai sanctioned under G.O.Ms.No.474 LA dated 02.03.1969.”

9. Therefore, the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed. No costs.”

4. Following the same, this Court is of the view that the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed and the respondents are directed to release the land in Old Survey No.105/1 and New Survey No.105/1B measuring to an extent of 5.94 cents and New Survey No.105/1C measuring to an extent of acre 0.40³/₄ cents situated at Velampalayam Village, Tirupur North Taluk, Tirupur District, out of 0.475 acres, forming part of Velampalayam Detailed



Development Plan No.10, by virtue of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs.

08.04.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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V.BHAVANI SUBBAROYAN, J.

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