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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.4057 of 2023

and

W.M.P.(MD)No.3912 of 2023

M.S.P.Solai Nadar Memorial Higher Secondary
School Managing Board,
represented by its Secretary,
P.Murugesan, Dindigul-642 005.

... Petitioner

vs.

1.The Director of Town and Country Planning,
Office of Directorate of Town and Country Planning,
2nd, 3rd & 4th Floor,
E&C Market Road, Koyambedu, Chennai-600 107.

2.The Member Secretary,
Dindigul Local Planning Authority,
Dindigul.

3.The Commissioner,
Dindigul Municipal Corporation,
15/9, Trichy Road, Dindigul-624 001.

4.The Deputy Director and District Town and
Country Planning Officer,
Dindigul District Town and Country Planning Office,
No.14, Vivekananda Nagar, Dindigul-624 001.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the fourth respondent in File No.NIL/2022/TCP, dated 01.02.2023 and to quash the same insofar the rejection of planning approval citing the Balakrishnapuram Race Course Detailed Development Plan Part-II, is concerned and consequently, to direct the respondents to grant approval to the petitioner's online building plan Application in SWP/BPA/0005533/2023, dated 13.01.2023.

For Petitioner :Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates
For R1, R2 and R4:Mr.N.Muthu Vijayan
Special Government Pleader
For R3 :Mr.M.Thirunavukarasu

ORDER

The Writ Petition has been filed in the nature of a Writ of Certiorarified Mandamus seeking interference with the proceedings of the fourth respondent/Deputy Director, District Town and Country Planning Officer, Dindigul District Town and Country Planning Office at Dindigul and to direct the said respondent to grant approval to the



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building plan application, dated 13.01.2023, which had been submitted through online in SWP/BPA/0005533/2023.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents 1, 2 and 4 and Mr.M.Thirunavukarasu, learned Counsel for the third respondent.

3.In the affidavit filed in support of this Writ Petition, it had been stated that the petitioner society, M.S.P. Solai Nadar Memorial Higher Secondary School Managing Board, was established and registered under the Societies Registration Act, 1860 with registration No.444/1968. Lands had been purchased in New T.S.No.101, Ward No.7, Block No.1, GTN Road, Balakrishna Puram Village, Dindigul, measuring 1.74.00 hectares by a sale deed, dated 29.06.1972 registered as Doc.No. 1118/1972 in the office of the jurisdictional Sub Registrar. The petitioner claims that the petitioner is in possession and enjoyment of the land. Thereafter, in order to develop the land, building approval was sought and in this connection, building plan application aforementioned had



been forwarded through online by the petitioner herein. This was on 13.01.2023. However, the fourth respondent had issued proceedings, which are now questioned in the Writ Petition refusing to grant approval. By the impugned order, dated 02.01.2023, the fourth respondent had stated that the land is part of the Balakrishnapuram Race Course Detailed Development Plan Part-2-AA for 100 feet widening road.

4.The learned Senior Counsel appearing on behalf of the petitioner had produced the notification of the aforementioned plan, which was dated 24.12.1986. It is therefore contended that under Section 38 of the Town and Country Planning Act, since the scheme has not been put to effect, it has to be deemed to have lapsed.

5.The issue in this regard is no longer *res integra*. A learned Single Judge of this Court by an order, dated 27.09.2019, in ***W.P. (MD)No.9118 of 2009 [A.George (died) and another vs The Member Secretary, Thanjavur Local Planning Authority and others]*** had examined the issue and had finally stated as follows.

“12.Likewise, there is no dispute or disagreement that there is no acquisition of aforesaid land that was reserved in the



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instant case.

13. Therefore, in the considered view of this Court, it follows as an indisputable sequitur that the land reserved in the instant case ie., case on hand also stands released by operation of Section 38 of T.N.T.C.P.A Act.

14. The further sequitur is that the impugned order made by the third respondent has to be set aside.

15. In the light of narrative thus far, instant writ petition is allowed. There shall be no costs.”

6. It is noted that another learned Single Judge of this Court in ***W.P. (MD) Nos. 29118-29120 of 2022, [Rahman Beevi vs the Director, Directorate of Town and Country Planning and another]***, dealt with Karanthai Detailed Development Plan Part-VI and by an order, dated 20.01.2023 had stated as follows:

“2. The petition mentioned land was reserved for road purposes in the detailed development plan in the year 1988. Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 is 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 (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.”

3. In this case, within three years from the date of publication of the detailed development plan, the land was not acquired. Since consequential steps were not taken, it is declared that the reservation made in respect of the petition mentioned land is deemed to have lapsed. It stands released from such reservation



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in view of the aforesaid statutory provision. The respondents are directed to make the necessary changes in the revenue record.

4. These writ petitions are allowed accordingly. No costs."

7. The said order also enures to the petitioner herein. The provision of law is very clear on this aspect. If a detailed development plan is not put in effect within a period of three years from the date of notification, it has always been held as lapsed.

8. The learned Senior Counsel also relied on the judgment of Supreme Court in ***Raju S. Jethmalani and others vs. State of Maharastra and others*** reported in ***(2005) 11 SCC 222***, with a specific reference to paragraph No.3. It had again been reiterated that the Government can prepare a development plan, but cannot deprive the persons from using the private property without acquiring the private land.

9. In view of the fact that there has been no acquisition and only a plan had been drawn, the plan is deemed to have lapsed under Section 38 of the Act. The Writ petition stands allowed and the impugned order is



set aside and a direction is given to the fourth respondent to examine the application for building approval, which had been forwarded by the petitioner herein on 13.01.2023 in SWP/BPA/0005533/2023 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. If required, notice may be issued for personal appearance of the petitioner and if any clarifications are required, they may be sought from the petitioner herein, who may clarify the same to the satisfaction of the fourth respondent. No costs. Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes
NCC : Yes/No

26.04.2023

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To
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C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.4057 of 2023

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