



W.P(MD)No.7952 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.7952 of 2023

Gunasekaran

... Petitioner

Vs.

- 1.The Director
Town and Country Planning,
CMDA Building,
E and C Market Road,
Koyambedu,
Chennai - 92.
- 2.The Assistant Director Cum Member
Secretary Local Planning Authority,
Theni Zone,
Town and Country Planning,
D.No.446/A, 17 Ward, Nehruji Street,
Allinagaram,
Theni.
- 3.The Commissioner
Theni-Allinagaram Municipality,
Theni.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare the reservation of



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lands comprised in respect of petitioner's land in T.S.No.27/3, situated in Detailed Development Plan No.5, Ward -2, Block -26 comes within Local Planning Area of Respondents No.2 and 3 as lapsed and deemed to be released in light of Section 38 of Tamilnadu Town and Country Planning Act, 1971, based on the petitioner's representation dated 18.10.2022.

For Petitioner : Mr.A.Mithun Chakravarthi

For Respondents : Mr.J.Ashok, - for R1 & R2

Additional Government Pleader

Mr.G.Kaleeswaran - for R3

ORDER

The Writ Petition has been filed in the nature of a Declaration seeking a declaration that the reservation of lands in T.S.No. 27/3, situated in Detailed Development Plan No.5, Ward - 2, Block - 26, which comes within Local Planning Area of the respondents more specifically, third respondent / The Commissioner, Theni-Allinagaram Municipality, Theni, has lapsed consequent to the provisions under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner had given a representation on 18.10.2022 in this regard.



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2. In the affidavit filed in support of this writ petition, it had been stated that the petitioner had purchased lands in T.S.Nos.26/2, 28/4, 27/1, 27/3, 27/4, 27/7, 27/8, 27/9 by various registered sale deeds. The total extent of the lands were 3 acres and 24 cents. The petitioner wanted to develop the lands and sell the same by way of plots. He approached the respondents 2 and 3 for conversion of lands from agricultural to house site. This was also granted. He then filed an application to the first respondent for grant of permission to lay out a diagram and alignment of the roads and at that time, the petitioner came to know that there was a scheme to widen the 60 feet road in T.S.No.27/3 as per Detailed Development Plan No.5 approved in the DTCP No.66/95 dated 01.12.1995, issued by the Local Planning Authority. It had been stated that though this was of the year 1995 for more than three years, the widening of the road was not undertaken.

3. I am also informed that the third respondent had passed a resolution dropping the scheme of such formation of road or widening of the road.



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4. Section 38 of the Tamil Nadu Town and Country Planning

Act, 1971, is 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 (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."

The provision of law is very clear. It specifically provides that if within three years from the date of publication of notice under Section 26 or under section 27, if the land is not acquired, then the land shall be deemed to be released from such reservation, allotment or designation.

5. In this case, the third respondent had very specifically passed a resolution that they are not proceedings further with the purpose



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for which they wanted to acquire the land namely, widening / formation of the road. Since the three years period has also lapsed, Section 38 of the Town and Country Planning Act, 1971, automatically comes into play. It is a provision which comes into effect once the three year period is expired.

6. In view of this particular fact, the writ petition deserves to be allowed and accordingly, the same is allowed and it is declared that the lands in T.S.No.27/3 which had been purchased by the petitioner herein stand released from any acquisition proceedings or from any of the provisions of the Town and Country Planning Act, 1971, or from the Detailed Development Plan No.5 which was approved in DTCP No. 66/95 dated 01.12.1995, issued by the Local Planning Authority. No costs.

05.06.2023

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

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C.V.KARTHIKEYAN, J.

RM

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