



W.P. (MD).No.16135 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.11.2023

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD).No.16135 of 2021
and WMP(MD)No.12997 of 2021

M.Aakhir Banu

... Petitioner

Vs

1. The Director,
Town and Country Planning, No.807,
Anna Salai, Chennai.
2. The Member Secretary,
Madurai Local Planning Authority,
Corporation Office Building, Anna Malaigai, Madurai.
3. The Executive Engineer (Scheme) (PO),
Madurai Corporation, Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned order passed by the 3rd respondent vide Mathi2/0009903/2021 and Mathi2/0009904/2021, dated 03.08.2021 and quash the same as illegal and further direct the respondents to release the petitioner's lands in S.Nos.70/6, 70/7, 70/6C and 70/7A2, Plot Nos.19, 20, 24, 25, Thiruppalai Group, Sirudur Village, Madurai North Taluk



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forming part of the Sirudur Detailed Development Plan Part (V) to have lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN ACT 35 of 1972) and consequently direct the 2nd respondent to grant planning permission for development of petitioner land.

For Petitioner : Mr. C.Prithviraj
For Respondents : Ms.S.Jeyapriya (R1, R2)
Government Advocate
Mr.K.Sivabalan (R3)

ORDER

This writ petition has been filed challenging the impugned proceedings of the third respondent, dated 03.08.2021 and for a consequential direction to release the land belonging to the petitioner, which formed part of Sirudur Detailed Development Plan and to further direct the second respondent to grant planning permission for development of his land.

2.Heard, the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the third respondent.



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3.The issue involved in this petition is squarely covered by the order passed in W.P(MD) No.15265 of 2021, dated 27.08.2021. For proper appreciation, the relevant portions in the order is extracted hereunder:

“2. The petitioner purchased a plot bearing No. 174(S) in UDR Survey No.116/3, Siruthur Village, Thiruppalai Group, under a registered sale deed dated 29.06.2021. Such lands were included in the Siruthur Development Plan VI-'BB' 40', which was published in the year 1998. The petitioner states that if lands are reserved under a detailed development plan, such lands would be deemed to be released in terms of Section 38(b) of the Tamil Nadu Town and Country Planning Act 1971 (the Act of 1971) unless such lands are acquired in terms of an agreement within a period of three years from the date of publication of a notice in the Tamil Nadu Gazette under Sections 26 or 27 thereof. In the case at hand, it is stated that the detailed development plan was approved in terms of Section 29 of the Act of 1971 in the year 1998. As such, in view of the failure of the respondents to initiate necessary action to acquire the land within a period of three years, it is stated that the lands are deemed to be released in terms of Section 38.

3. The petitioner also cites earlier judgments of this Court in this regard, In particular, the judgment in RM Shanmuganathan Vs. The Director of Town and Country Planning 2018 (2) CWC 20 is cited. Learned counsel points out that the said judgment pertains to the same Siruthur Village, in respect of which the present writ petition is filed. Another



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judgment in M.Amsavalli Vs. The Director of Town and Country Planning 2017 (2) CWC 418 is also cited. Once again, it is pointed out that the said judgment also relates to the Siruthur Village.

4. Mr.R.Baskaran, learned counsel for the State, accepts notice on behalf of respondents 1 and 2. He submits that the writ petitioner is entitled to the benefit of the earlier order of this Court in as much as the detailed development plan in the instant case was also the subject matter in the earlier orders of this Court. Mr.Prabhuramachandran, learned counsel, accepts notice on behalf of the third respondent.

5. Upon considering the aforesaid submissions and on examining Section 38 of the Tamil Nadu Town and Country Planning Act 1971, it is clear that if the land is not acquired by agreement within three years from the date of publication of notice in the Tamil Nadu Government Gazette under Section 26 or 27 thereof, such lands shall be deemed to be released.

6. In view of the aforesaid statutory prescription and taking into account the earlier judgments of this Court, reported in 2018 (2) CWC 20 and 2017 (2) CWC 418, the writ petitioner is entitled to succeed.

7. Consequently, W.P.(MD).No.15265 of 2021 is allowed by quashing the impugned order dated 22.07.2021 and directing the respondents to release the land bearing Survey No. 116/3 at Sirudhur Village, Thiruppalai Group, Madurai North Taluk, Madurai District in terms of Section 38 of the Tamil Nadu Town and Country Planning Act 1971. There will be no order as to costs. Consequently, connected W.M.P.(MD).Nos.12174 and 12175 of 2021 are closed.”



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3.In the instant case, the husband of the petitioner had purchased plots through a registered sale deed, dated 03.06.1994. The properties were thereafter, settled in favour of the petitioner through a registered settlement deed, dated 01.09.2017. These plots also fell within the Sirudur Detailed Development Plan.

4.In view of the fact that the lands were not acquired within a period of three years, the lands are deemed to be released in terms with Section 38 of Town and Country Planning Act. Hence, the same reasoning in the above order will apply to the petitioner also.

5.In view of the above, the impugned proceedings of the third respondent in Mathi2/0009903/2021 and Mathi2/0009904/2021, dated 03.08.2021 are hereby quashed and there shall be a direction to the respondents to release the subject property and a further direction to the second respondent to entertain the application submitted by the petitioner for planning permission subject to the petitioner fulfilling all other requirements.



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6. Accordingly, this writ petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

17.11.2023

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

To

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N.ANAND VENKATESH, J.

PNM

**ORDER IN
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