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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2023

CORAM

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

W.P.(MD)No.15620 of 2023

A.K.Jazeem Fathima

... Petitioner

vs.

1.The Secretary to Government,
Housing and Urban Development Department,
The Secretariat, Chennai.

2.The Director of Town and Country Planning,
O/o.The Director of Town and Country Planning,
No.807, Anna Salai, Chennai -02.

3.The District Collector,
Madurai District, Madurai.

4.The Member Secretary,
Madurai Local Planning Authority,
3rd Floor, Corporation Office Building,
Madurai.

5.Madurai Municipal Corporation,
through its Commissioner,
Corporation Office, Alagar Koil Road,
Tallakulam, Madurai.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, to declare the reservation made in respect of the petitioner's land in Writ of Declaration that the petitioner's property S.No.151/2D1 and 151/3A4A of Uthangudi Village, Madurai an extent of 24.82 cents reservation as per Section 38 of the Tamil Nadu Town and Country Planning Act and consequently, to direct the respondents to issue appropriate order releasing petitioner's property from the Uthangudi Extension Development Plan (South), in light of the judgment of this Court in Commissioner Aruppukottai Municipality vs Kamakshi Shetty reported in 2011 (8) MLJ 437 and consequently, to direct the respondents to make necessary entry regarding lapse of the Uthangudi Extension Development Plan (South) in respect of petitioner's property.

For Petitioner	:Mr.K.Dinesh for Mr.N.S.Karthikeyan
For R1 to R4	:Mr.D.S.Nedunchezian Government Advocate
For R5	:Mr.S.Vinayak

ORDER

This Writ Petition has been filed in the nature of a Writ of Declaration to declare the reservation in respect of the petitioner's land S.Nos.151/2D1 and 151/3A4A of Uthangudi Village, Madurai measuring 24.82 cents, as lapsed as per Section 38 of the Tamil Nadu Town and



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Country Planning Act and to direct the respondents to make necessary entry regarding lapse of the Uthangudi Extension Development Plan (South) in respect of petitioner's property.

2.Heard Mr.K.Dinesh, learned Counsel for Mr.N.S.Karthikeyan, learned Counsel for the petitioner, Mr.D.S.Nedunchezian, learned Government Advocate for the first to fourth respondents and Mr.S.Vinayak, learned Counsel for the fifth respondent.

3.The learned Counsel for the petitioner stated that under Section 38 of the Act, the land should be released if within three years from the date of publication of the notice in the Tamil Nadu Government Gazette, the land had not been acquired.

4.In this connection, the learned Counsel for the petitioner had placed reliance on an earlier order with respect to Karanthai Detailed Development Plan Part-III(Map No.5). 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 very same 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 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.”

5.It is also stated 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



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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 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.”

6. The reasons therein enure to the petitioner also. Accordingly, since the land had not been acquired within a period of three years from the date of publication of the detailed development plan and since consequential steps have not been taken, I hold that the land stands released from such reservation. The respondents are directed to make necessary changes in the revenue records.

7. The Writ Petition stands allowed. No order as to costs.

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

30.06.2023



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C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.15620 of 2023

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