

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.02.2023

PRONOUNCED ON : 03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.3039 of 2014

R.Chandramohan

... Petitioner

/vs./

- 1.The Commissioner,
Thoothukudi Municipal Corporation,
Thoothukudi.
- 2.The Member Secretary,
Thoothukudi Town and Country Planning
Area, Thoothukudi District.
*(R2 has been impleaded vide
order dated 08.12.2022)*

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the Proceedings of the Impugned Order in Na.Ka.No.11299/13/F3 dated 09.12.2013 on the file of the respondent and quash the same and further directing the Respondent to consider the Petitioner's application for building plan approval

without reference to any reservation under Meelavittan Extension Development Scheme No.1.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 : Mr.N.Anandakumar
For R2 : Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the first respondent in refusing to consider the planning permission of the petitioner on the ground that the area has been demarcated for a scheme road and to consequently direct the respondents to consider the application for building plan approval without reference to any reservation under the Meelavittan Extension Development Scheme No.1.

2.Heard Mr.G.Prabhu Rajadurai, learned counsel for the petitioner, Mr.N.Anandakumar, learned counsel for the first respondent and Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the second respondent.

3.Mr.G.Prabhu Rajadurai, learned counsel for the petitioner would submit that the petitioner and his brother jointly purchased the property being a vacant land measuring an extent of 12.03 cents out of 1.41 acres in S.No.571/1 at Meelavittan Village, Thoothukudi Taluk and District by a registered sale deed dated 24.08.2011. Thereafter, the petitioner and his brother had orally divided the property among themselves in equal measures on 10.10.2013. The petitioner thereafter had proposed to construct a building, which was opposed by the officials of the first respondent and they had issued a notice calling upon the petitioner not to make any constructions without obtaining any planning permission. Challenging the same, the petitioner had preferred a suit in O.S.No. 437 of 2013. The petitioner was advised to seek approval of the site and also for building plan approval in accordance with the regulations of the respondents and hence, the petitioner had submitted an application for necessary approval on 25.11.2013. However, by the impugned order, the same had been rejected holding that the plot in question has been earmarked for a scheme road under the Meelavittan Extension Development Scheme No.1. The said scheme was approved by the Government and came into force on 31.03.2006.

4.He would further submit that pursuant to the scheme, no acquisition proceeding has been initiated as prescribed under the Tamil Nadu Town and Country Planning Act, 1971 (*herein after referred to as Act*). Therefore, the lands of the petitioner were deemed to be released from the scheme and the order of rejection passed by the first respondent is wholly non-est and void. Therefore, he would seek to set aside the order passed by the first respondent and to direct issuance of planning permission to the petitioner as sought for in the application dated 25.11.2013.

5.Pending this writ petition, this Court, vide order dated 08.12.2022, has *suo motu* impleaded the second respondent herein.

6.Countering his arguments, Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the second respondent would submit that when it is an admitted case that a detailed development plan has been published and the same is still in force, the petitioner is bound by such a scheme. The petitioner's land has been earmarked for a scheme road and therefore, the petitioner is not entitled to get the planning permission as required by him. Relying upon the counter

affidavit filed by the second respondent, she would submit that the Meelavittan Detailed Development Plan No.1 has been registered as Doc.No.92/95 and pursuant to the same, Map.No.2 was also prepared and conveyed to the land owners on 19.02.1996. After receiving their objections and suggestions, the same has been forwarded to the Director of Town and Country Planning, Chennai and he had also given his consent under Section 25 of the Act by proceedings dated 18.09.1999.

7.A Gazette publication was also published on 28.03.2001 and the Local Planning Authority, Tuticorin, namely the second respondent herein, had also passed resolution on 27.07.2001 seeking final approval. Thereafter, the Director of Town and Country Planning, Chennai had approved the Meelavittan Detailed Development Plan No.1 by his proceedings dated 31.03.2006 under Section 29 of the Act and the same has also been published in the Tamil Nadu Gazette on 09.05.2006. The said notification was also displayed in the office of the second respondent, Local Panchayat Union Office, the District Collector's office and the Regional Deputy Director of Town and Country Planning. Therefore, when the

rules are in force, the claim of the petitioner could not be entertained. Hence, she would seek dismissal of this writ petition.

8.I have heard the rival submissions made by the learned counsels appearing on either side.

9.Chapter III under the Act gives the procedures of a development plan being put in place for a particular area. Various modalities have been contemplated for grant of approval and grant of consent by various authorities. The consent has been issued by the Director of Town and Country Planning, Chennai by his proceedings dated 18.09.1999 under Section 25 of the Act. Thereafter, a Gazette publication has been made on 28.03.2001 as provided under Section 27 of the Act. The Meelavittan Detailed Development Plan No.1 was approved by the Director on 31.03.2006 under Section 29 of the Act. For better appreciation, the relevant dates are tabulated hereunder:-

S.No.	Particulars	Date
1	Consent under Section 25 of the Act	18.09.1999
2	Publication under Section 27 of the Act	28.03.2001
3	Approval under Section 29 of the Act	31.03.2006

10.It is also relevant to note that after the approval of Meelavittan Detailed Development Plan No.1, any land that is required, reserved or designated in a regional plan, master plan, shall be deemed to be a land needed for public purpose and the same ought to be acquired under the provisions of the Land Acquisition Act, 1894. The same is provided under Chapter IV of the Act. For better appreciation, the relevant provisions under Chapter IV for determination of this case are extracted hereunder:-

“Section 36 of the Act :-

36. Compulsory acquisition of land needed for development plan:- Any land required, reserved or designated in a regional plan, master plan, detailed development plan, new town development plan or a land pooling area development scheme for the development or redevelopment or improvement of the area within the jurisdiction of a planning authority, as the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and may be acquired under the said Act.

Section 37 of the Act:-

37. Power to purchase or acquire lands specified in the development plan.- (1) Where after the publication of the notice in

the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan, new town development plan or a land pooling area development scheme for the development or redevelopment or improvement of the area within the jurisdiction of a planning authority, any land is required, reserved or designated in such plan, the appropriate planning authority may acquire the land, -

(a) by agreement, by paying an amount agreed to; or

(b) in lieu of any such amount, by granting the land owner the transfer of development rights against the area of land surrendered free of cost and free from all encumbrances, and also further additional floor space index or transfer of development rights against the development or construction of the amenity on the surrendered land at his cost, in such manner as may be prescribed; or

(c) by making an application to the Government for acquiring such land under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of floor space index and additional floor space index in the form of transfer of development rights under this section or under the said Act, as the case may be, shall vest absolutely free from all encumbrances in the appropriate planning authority.

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may acquire the said land by following the procedure laid down in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

Section 38 of the Act:-

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 acquisition of land as provided in sub-section (2) of section 37 is made in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan, new town development plan or a land pooling area development scheme 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;

Provided that the Government may, by notification, extend the period for such time as they may think proper, but such period shall in no case, exceed five years."

11.From a reading of the aforesaid provisions, it is clear that if any land that is required, reserved or designated in a regional plan, master plan, detailed development plan, new town development plan or a land pooling area development scheme, then there shall be an acquisition of the said lands under Section 36 of the Act or the appropriate authority ought to enter into an agreement for acquisition of such lands either by paying such amount or by granting the land owner, the transfer of development rights against the area of land surrendered free of cost and free from all encumbrances and also further additional floor space index etc., under Section 37 of the Act.

12.Further, Section 38 of the Act mandates a deeming provisions, if the provisions of Sections 36 and 37 of the Act are not invoked. It mandates that within five years from the date of publication of notice either under Section 26 or Section 27 of the Act, if no acquisition of land as provided in sub Section (2) of Section 37 is made or such land is not acquired by agreement, then such notified land shall be deemed to be released from such reservation, allotment or designation. A proviso has also been appended to Section 38 of the Act, wherein, the period of five years can be extended by the Government by a notification. But

however, such extended period has also been restricted to a further period of five years only.

13.In the present case, the notification under Section 27 of the Act was given on 28.03.2001 and no land acquisition proceeding has been initiated either under Sections 36 or 37 of the enactment. When no land acquisition proceeding has been made, the provisions of Section 38 of the Act, namely the deeming provisions, would automatically release the lands that were reserved for a public purpose, in this case a scheme road. Taking into account of the date of notification issued under Section 27, namely, 28.03.2001 and by application of the deeming provisions, the lands of the petitioner are statutorily deemed to be released on 27.03.2001. Unfortunately, without looking into the provisions of this enactment, the Director of Town and Country Planning, Chennai has made a publication under Section 29 of the Act beyond the said period of five years only on 31.03.2006.

14.Therefore, in my view, the notification issued under Section 29 of the Act is non-est for the reason that the notification issued under Section 29 of the

Act includes the lands, which were statutorily deemed to be released by application of Section 38 of the Act.

15.As I have found that the lands of the petitioner have been deemed to be released by an application of Section 38 of the Act, the order impugned in this writ petition passed by the first respondent on the ground that the land has been reserved for a scheme road will have to be necessarily set aside.

16.In fine, the Writ Petition is allowed and the impugned order passed by the first respondent in Na.Ka.No.11299/I3/F3 dated 09.12.2013 is set aside. The first respondent is directed to consider the application of the petitioner and pass appropriate orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No
mm

03.03.2023

W.P.(MD) No.3039 of 2014

To

The Member Secretary,
Thoothukudi Town and Country Planning
Area, Thoothukudi District.

W.P.(MD) No.3039 of 2014

K.KUMARESH BABU, J.

mm

order made in
W.P.(MD) No.3039 of 2014

03.03.2023