



WP(MD)No.26501 of 2022, etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 27.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.26501 of 2022 & 6094, 6776, 8833, 9322 to 9324,
14259, 14439, 15870, 15871, 15926, 16232, 17247, 17250, 17251,
17493, 17869, 17870, 18480, 18704, 18767, 19351, 19353, 20264,
20268, 20424, 21722, 21772, 22231 of 2023**

and

WMP(MD)Nos.13606, 14444, 14448, 15319, 16012, 16432 of 2023

WP(MD)No.26501 of 2022:-

C.Subramanian

Through his power agent

S.Chidambaram

... Petitioner

v.

1.The Director of Town and Country Planning,
Directorate of Town and Country Planning,
No.807, Anna Salai, Chennai.

2.The Joint Director,
Tirunelveli District Town and Country Planning Office,
Xavier Colony, South Bypass Road,
Tirunelveli District – 5.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India

seeking issuance of a Writ of Declaration to declare the Field No.1376 of Swami Nellaiyappar High Road, T.P.Scheme No.III, Scheme Road Plan, to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

For Petitioners : Mr.R.T.Arivukumar

For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader

COMMON ORDER

These writ petitions are filed by the respective petitioners to release their lands as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as “the Act”), since they were not acquired for the purpose specified under the development plans.

2.The properties of the petitioners were identified for future development under the development plans and were notified in the Government Gazette around 10 years back. This is not in dispute. Any



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property, identified and notified as land required for the development plans, ought to have been acquired within a period of 5 years as per Sub-Section 2 of Section 38 of the Act. If the lands are not acquired within 5 years from the date of publication under the Government Gazette, such lands shall be deemed to be lapsed from such reservation.

3.As per the provisions of the Act, the developments are made region wise and accordingly, declared into regional planning areas and local planning areas. The planning authorities for respective region are also appointed under Section 11 of the Act. The respective planning authorities prepare regional plan, master plan, new town development plan and detailed development plan depending upon the requirement of that area. These plans are known as development plans which is defined under Section 2(15) of the Act.

4.The development plans are prepared considering the future requirements of the general public in that particular area. It is the responsibility of any welfare State to fulfill the basic requirements of their



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citizens, as per the Constitutional mandate of Right to Life guaranteed as a fundamental right in our Constitution. The responsibility of the legislature is to enact law considering the fundamental rights enshrined under the Constitution of India and to frame procedures for the Executives for proper execution of the same.

5.The planning authorities appointed under Section 11 of the Act are the ones who are expected to act in accordance with the procedures to implement the law as provided under the Rules and the Act. Further, a duty is cast upon the Government to ensure that Right to Life which includes the Right to Shelter, Right to Livelihood, Right to Health, Right to Pollution Free Water & Air and etc, remains unfringed for its citizens.

6.Preparation and sanction of these development plans are governed by Rules such as Master Plan (Preparation, Publication and Sanction) Rules and Preparation and Sanction of Detailed Development Plan Rules. As per those Rules, a detailed procedure has been contemplated in preparing and notifying these plans. As per the Preparation and Sanction of Detailed Development



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Plan Rules, the planning authorities are expected to assess the value of the properties which are required for the planning area. As per Rule 7 of the Rules, proposals are made after providing opportunity to the concerned land owners, considering their objections. Rule 10 provides that the draft detailed development plan shall state the financial details such as the estimated cost of the plan under Form No.8. The Director, after considering the draft proposals of plans, shall scrutinize the same and suggest modifications, if any. Only then, the notifications are published in the Government Gazettes and even before the publications, the Government is aware of the financial requirements for the developments.

7. In all these batch of cases, the proposals are made and notified long back. Perusal of the Preparation and Sanction of Detailed Development Plan Rules, shows that the authorities have fixed the market value of the properties required and sent the proposal mentioning the amount required for the development. The process contemplated under the Act and Rules are elaborate, which, itself, requires a detailed estimate for the proposed development. After considering the requirements and spending huge money



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for the process, the lands which are required for the development plans are not acquired for several years since the Government is not allotting any funds for the same. Almost all the land owners are approaching the Court for releasing their lands from the respective development plans under Section 38 of the Act.

8. There cannot be any development as per the notification, till the acquisition process are completed. Similarly, pending the acquisition proceedings, the land owners cannot alienate the property, in view of the publications made and they are also prevented from developing their lands till the completion of five years as per the available provisions and as such, the land owners are deprived from utilising the property in the meantime. Depriving a person from utilising his property for nearly five years itself is against the right guaranteed under the Constitution and as such, the Government is answerable to the same.

9. Right to Property once guaranteed as a fundamental right is still existing as a constitutional right under Article 300A. No one can be deprived



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of his property without following the due process of law. The Government is entitled to acquire the lands, if it is required for any public purpose, however, in accordance with the existing legislation by acquiring the lands under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which regulates land acquisition and lays down the procedure and rules for granting compensation, rehabilitation and resettlement to the affected persons in India.

10. Even without initiation of any proceedings for acquisition, the Government is preventing the land owners from using their lands fully by notifying the lands for the development plans under the Act. In view of these notifications under the Act, the local bodies may not give any building permission to the land owners and the land owners are also deprived from selling their lands for any emergency purpose. No one would purchase the land notified under the development plans. If such notified lands are sold without informing the authorities, the land owners would face criminal prosecution. Therefore, those lands notified remain dormant without any use to the general public or to the concerned land owner.



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11.This Court is surprised that within 3 months, around 25 cases are listed before this Court seeking to release their respective lands for the development plans in view of non-acquisition. Hence, around 100 such cases are filed every year in the Madurai Bench of Madras High Court alone and similar such writ petitions are also filed before the Principal Seat of this Court as well. Around lands covered under 200-300 development plans are declared every year as released and therefore, this Court is having doubts as to whether the Government is implementing any of the development plans completely. Therefore, this Court by order dated 14.08.2023 directed the respondents to file their response as to the number of Maser Plans, Regional Plans and Detailed Development Plans notified by the Government in the past and the extent to which such plans are implemented by the Government.

12.For the response of the Government, this Court has also periodically adjourned these batch of writ petitions. However, the respondents have not filed any response. The learned Additional Advocate General who entered appearance in the earlier hearings, has also not appeared in the subsequent hearings. Therefore, this Court takes an adverse inference that none of the



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development plans are implemented completely by the State by acquiring the lands earmarked for public purpose. This non-acquisition would have drastic consequences on the common public in the near future.

13.The development plans are the basic charter for the land use in a region. However, the plans envisioned could not be implemented due to non-acquisition. Hence, the lands get inevitably released under Section 38 of the Act. The development plans are prepared considering the basic requirements of the people, density of the population and other basic needs which are required for mankind. The master plans prepared should be reviewed every 5 years and regional plan needs to be revisited every 10 years as per Section 32 of the Act. Whereas, a detailed development plan can be varied and revoked at time by the Government under Section 33 of the Act. However, the plans prepared and notified long back are not implemented and automatically, the plans prepared with great care and efforts become futile due to inaction. These plans, which are prepared considering the requirement of the people of that area, are allowed to get lapsed and it is not known as to how the Government is going to address the basic needs of a common man when the



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lands reserved for public purposes are released. We are witnessing the consequences with stagnation of water, overflowing of drainage, traffic and pollution as the result of this. If this is the position in 2023, it is not known what would be the position in 2028 or in 2033.

14.In all these cases, the Government notified the petitioners' lands as the lands required for future development of the State. However, the lands are neither acquired nor any compensations were paid to the petitioners. Ultimately, the entire exercise conducted by the authorities in preparing the development plans have become futile. The Government is empowered to collect various types of taxes such as Income tax, Wealth tax, Gift tax, Capital Gains tax, Securities Transaction tax, Corporate tax and etc., to provide the basic services and amenities to the people. Almost all the popular Governments are utilising these tax money to provide freebies to the people (voters) without giving preference to the essential requirements of the public.

15.Though it is the policy decision of the Governments to utilise the public money in freebies, these popular Governments are also having a



mandate to fulfil the basic requirements of a common man guaranteed under the Constitution of India. The planning authorities under the Act are also having responsibilities in implementing the development plans in its *stricto sensu* to achieve the object for which the enactments have been made.

16.The amount of energy spent by the authorities in preparing the development plans are evident. The authorities are taking not less than one and half years to finalise the plans and notify the same at Government Gazette after approval. However, they fail in execution by not acquiring the lands as contemplated under those plans. The popular Governments are not paying any attention to these plans and not allotting any funds. Ultimately, the common man is the sufferer with no proper amenities, resulting in health issues, traffic jams and etc., thereby, causing unimaginable disorder in the public.

17.The respondents, as an empty formality, have notified the lands of the petitioners under the plans for the public purpose with no sincere steps to acquire the same and the Government also plays a role by not allocating any funds. At last, it is the petitioners / land owners, who are the victims of this



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empty gesture by the respondents. They have been unlawfully deprived from utilising their properties for years and it is the Government which has to suitably compensate them for the same.

18. Therefore, all these writ petitions are allowed, releasing the lands of the petitioners from the respective development plans. In view of the passage of time for which the petitioners are deprived from their property, this Court is inclined to impose a cost of Rs.1,00,000/- in each writ petitions, payable by the Government to the respective petitioners. However, the petitioners' Counsel expressed their concern and requested for waiving the costs that in the event of imposing a cost of Rs.1,00,000/- in each case, then the Government will contest the matter again in the Appeal. They further submitted that the petitioners have already suffered and incurred expenses for filing these writ petitions for no fault of theirs and they have to incur additional expenses for defending the Writ Appeals. The learned Counsel have also expressed that the Act prescribes 3 years as the time period for the acquisition of the lands as per the notifications and the same has now been increased to 5 years. If the order imposing cost is passed, then the



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Government may even delete this provision under Section 38 and the common man has to suffer eternally under the hands of the Government.

19.This Court is imposing the cost not only for having deprived the petitioners from utilising their properties without any acquisition for a period of 5 years or more, but also to make the Government to realize the need for the development of the future and the importance of planning. The planning authorities are expected to get financial sanctions before notifying the respective places in the Government Gazette under the Act.

20.The Government, which is preparing the development plans, would very well know the financial requirements in the implementation of the plans. Approvals are granted at Government level knowing fully well of the requirements. Even after five years from the date of publication, if they have not allotted any funds and are depriving the land owners from utilising the properties, the Government is liable to pay compensation as per the mandate under the Constitution. Therefore, this Court is imposing a cost of Rs.5,000/- in each writ petitions, payable by the Director of Town and Country Planning



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to the respective petitioners, within a period of one month from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
gk

27.09.2023

To

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