



WEB COPY



W.P.No.3384 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

W.P.No.3384 of 2024

P.Selvan

... Petitioner

Vs.

1. The Secretary
Housing and Urban Development
Department,
Fort St. George, Chennai – 600 015

2. The Director,
Tamilnadu Town and Country Planning,
Chennai – 600 002

3. The Assistant Director,
Namakkal District Town and Country
Planning Office,
Door No.6/1217, Paramathi Road
(South Side), Namakkal – 637 001

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to declare that the petitioner's land comprised in land situated at old Survey No.376/13, T.S.No.38/18, Ward D, Block-4, Namakkal Town, Namakkal Village, Namakkal District, measuring about 0.64 acres or 2579 Sq.metres is deemed to be released from the reservation of Section 38 of Tamilnadu

Town and Country Planning Act, 1971 and consequently, direct the



W.P.No.3384 of 2024

respondent to pass appropriate orders for release of petitioner's land comprised in land situate at Old S.No.376/13, T.S.No.38/18, Ward D, Block-4, Namakkal Town, Namakkal Village, Namakkal District, measuring about 0.64 acres or 2579 sq.meters and pass appropriate orders.

For Petitioner : Mr.M.R.Dhalapathy Vignesh Kumar

For Respondents : Mr.A.M.Ayyadurai
Government Advocate

ORDER

The petitioner has filed a present petition for issuance of a Writ of Mandamus directing the respondents to declare that the petitioner's land comprised in land situated at old Survey No.376/13, T.S.No.38/18, Ward D, Block-4, Namakkal Town, Namakkal Village, Namakkal District, measuring about 0.64 acres or 2579 Sq.metres is deemed to be released from the reservation of Section 38 of Tamilnadu Town and Country Planning Act, 1971 and consequently, direct the respondent to pass appropriate orders for release of petitioner's land comprised in land situate at Old S.No.376/13, T.S.No.38/18, Ward D, Block-4, Namakkal Town, Namakkal Village, Namakkal District, measuring about 0.64 acres or 2579 sq.meters and pass appropriate orders.



W.P.No.3384 of 2024

2. The case of the petitioner is as follows:-

WEB COPY

The petitioner, who is the absolute owner of the land situated at Old S.No.376/13, T.S.No.38/18, Ward D, Block – 4, Namakkal Town, Namakkal Village, Namakkal District measuring about 0.64 acres had purchased the same through a registered sale deed dated 01.10.2015 and registered as Document No.290/2016 before the SRO Joint II Namakkal. The 1st respondent in the year 2004, vide G.O.Ms.No.65 dated 04.03.2004, was pleased to form master plan in Namakkal area and as per the master plan, the petitioner's land was earmarked as Scheme Road under the detailed development plan. The scheme was prepared in the year 2004 and subsequently, no action was taken by the respondents to acquire the land for the said purpose and further proposal to form the park was neither implemented nor given effect and the lands have not been acquired by the Government and remains in possession and enjoyment of the petitioner. Hence, the petitioner have made an application to the 3rd respondent for regularization of the above lands on 13.12.2023 and to release the petitioner lands from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, but the same has not been considered by the respondents till date. Hence, this Writ Petition.



W.P.No.3384 of 2024

3. The learned counsel for the petitioner submitted that the development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning Act, since the lands have not been acquired within a period of three years from the date of publication and he further submitted that the similar issue has already been raised in ***W.P.No.34811 of 2023*** in the case of ***S.Vivekanandan and another v. The Director of Town & Country Planning, Office of Directorate of Town & Country Planning, Second, Third and Fourth Floors, E & C Market Road, Koyambedu, Chennai - 600 107 and Others***, and this Court, after hearing the case of the petitioner therein, allowed the said writ petition by holding that ***the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over.***

4. The learned counsel for the petitioner further contended that the similar issue has also been dealt with by this Court in W.P.No.33802 of 2022 on 03.02.2023, wherein this Court, allowed the said petition on the ground that ***the land has not been acquired within a period of three years, thereby, as per Section 8 of the Tamilnadu Town and Country Planning Act, the remaining area other than the layout already developed shall be released from the development plan***". Aggrieved by the order, the Commissioner, Thiruvallur had filed a Writ Appeal No.2696 of 2023. The Hon'ble First Bench of this Court, dismissed the said



W.P.No.3384 of 2024

appeal on 04.10.2023. Therefore, the learned counsel for the petitioner prayed to allow the present Writ Petition also.

5. Per contra, detailed counter affidavit has been filed by the respondents wherein it is stated that the land acquisition proceedings shall be carried out by the Namakkal Local planning authority i.e., Municipal Office (Local authority). No acquisition is admitted for laying the scheme road, but the said scheme road is required for general public and development of the entire village and the respondents would take all steps to assess the land and acquire the same as early as possible. Hence the scheme road serves as an essential for the locality people, therefore, the petitioner's request for deletion of scheme road as per section 38 of Town and Country Planning Act, 1971 is devoid of merits, thereby pleaded to dismiss the petition.

6. Considering the above said facts and taking note of aforesaid decision made by this Court in W.P.No.33802 of 2022 dated 03.02.2023, the present Writ Petition is allowed and the respondents are directed to release the land situated at Old S.No.376/13, T.S.No.38/18 Ward D, Block 4, Namakkal Town, Namakkal Village, Namakkal District measuring about 0.64 acres or 2579 sq.meters by virtue of Section 38 of Tamilnadu Town and Country Planning Act, 1971, as expeditiously as possible, preferably



W.P.No.3384 of 2024

within a period of eight weeks from the date of receipt of a copy of this order. It is also made clear that in the above land, if any public road has been found and laid, the same shall be part of the local body Government and shall not be released. No costs.

20.06.2024

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Secretary
Housing and Urban Development
Department,
Fort St. George, Chennai – 600 015
2. The Director,
Tamilnadu Town and Country Planning,
Chennai – 600 002
3. The Assistant Director,
Namakkal District Town and Country
Planning Office,
Door No.6/1217, Paramathi Road
(South Side), Namakkal – 637 001



WEB COPY



W.P.No.3384 of 2024

V.BHAVANI SUBBAROYAN J.

ssd

W.P.Nos.3384 of 2024

20.06.2024