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W.P.No.25323 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.25323 of 2024
and W.M.P.No.27670 of 2024

1. M.Eswaran
2. Muthusamy
3. Ayyammal

... Petitioners

Vs

1. The Director Of Town And Country Planning,
2,3 and 4th Floor, B, CMDA Office Campus,
E And C, Market Road, Koyambedu,
Chennai-600 107.
2. The Member Secretary / Executive Officer,
Coimbatore Local Planning Authority,
Coimbatore, Coimbatore District.
3. The Commissioner,
Coimbatore Corporation,
Raja Street, Town Hall,
Coimbatore-641 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Declaration, declaring that the reservation made in respect of the petitioners' land comprised in S.No.134/1A, 134/1B to the extent of 1.75 ½ acres in Vadavalli Village, Coimbatore Taluk under Vadavalli detailed development plan No.4 is



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deemed to be lapsed and released from the reservation in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 1974).

For Petitioners : Mr.V.Anandhamurthy
For R1 and R2 : MrV.Manoharan
Additional Government Pleader
For R3 : Mr.D.Arunkumar
Standing Counsel

ORDER

This writ petition has been filed for declaration declaring that the reservation made in respect of the petitioner's land comprised in S.No.134/1A, 134/1B to the extent of 1.75 ½ acres in Vadavalli Village, Coimbatore Taluk under Vadavalli detailed development plan No.4 is deemed to be lapsed and released from the reservation in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 1974).

2. Heard both sides and perused the materials available on record.

3. The petitioner's father and his minor brother had purchased the land comprised in S.No.134 to an extent of 1.75 ½ acres vide registered



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sale deed dated 01.07.1940 vide Document No.1416 of 1940 from one Muthan Chettiyar. After the demise of the petitioner's father, the petitioners, being the legal heirs inherited the said property and they were in possession and enjoyment of the same. Thereafter, the revenue records were also mutated in their name and Patta Nos.166 and 1700 were issued. While being so, the town planning authorities had earmarked the portion of their land comprised in S.Nos.134/1A, 134/1B for Vadavalli Detailed Development Plan No.4 for the purpose of formation of road which was notified in the year 1994. However, the said lands were not acquired for formation of proposed plan as provided under the provisions of Chapter IV of the Town and Country Planning Act, 1971. So far no acquisition was made in respect of the subject property. As per the Vadavalli Detailed Development Plan No.4, the roads were proposed and portion of the lands of the petitioners were reserved for formation of the scheme road, in the year 1994. However, the respondents did not take any steps to acquire the said lands under the Tamil Nadu Town and Country Planning Act, 1971, within a period of three years. It has been kept in cold storage for the past 30 years.



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4. As per Section 38 of the Town and Country Planning Act, 1971, if a particular land is not acquired by agreement, such land shall be deemed to be released for such reservation, allotment or designation. After completion of the year 1994, no further proceedings were initiated for acquiring the lands.

5. It is relevant to extract the provisions under Sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971 as follows:-

“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 or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

Provided that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under subsection (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to



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that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

Provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

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 released from such reservation, allotment or designation.”



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6. In this regard, already the Hon'ble Division Bench of this Court held in W.A (MD) No.485 of 2020 has held that the scheme had lapsed by virtue of Section 38 of the Act. The relevant portions in the judgment are extracted hereunder :-

“11. As rightly pointed out by the learned counsel appearing for the respondents/writ petitioners that the counter affidavit proceeds on the merits of the claim and in no way deal with deemed lapse and in the considered opinion of this Court, the learned Judge, on correct appreciation of facts and by applying the legal position as enumerated in the above said judgment, allowed the writ petition. This Court, on going through the reasons assigned in the impugned order, is of the considered view that there is no infirmity or error apparent on the face of the record for the reason assigned by the learned Single Judge for allowing the writ petition and finds that the writ appeal lacks merits.

12. It is also brought to the knowledge of this Court that the writ appeal filed by the official respondents in WA(MD) No.340 of 2020, against the order dated 27.02.2017 in W.P.(MD) No.14456 of 2014 was also dismissed on 02.03.2020.”

7. The above Judgment is squarely applicable to the case on hand, since the subject land was notified under Section 37 of the Tamil Nadu Town and Country Planning Act, 1971, in the year 1994. However, the respondents did not take any steps to acquire the subject land for its purpose even till today. Therefore, by operation of Section 38, the



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scheme itself lapsed and the subject land has to be released from the detailed development plan scheme.

8. Accordingly, this writ petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.

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Internet: Yes
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Neutral Citation : Yes/No
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN. J.

mn

To

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