



W.P.No.30658 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

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

W.P.No.30658 of 2023

G.Poovarasam

... 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

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of mandamus directing the respondents to declare that the petitioner's land comprised in land situate at Old S. No. 146/1, T.S.No.19/11, Now T.S. No.19/1B, Block No.4, Ward A, Namakkal Village Namakkal measuring about 1.63 acres is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the respondents to pass appropriate orders for release of petitioner's land comprised in land situate at Old S. No.146 /1, T.S. No.19/11 Now T.S No.19/1B, Block



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No.4, Ward A, Namakkal Village, Namakkal measuring about 1.63 acres

For Petitioner : Mr.Dhalapathy Vignesh

For Respondents : Mr.V.Manoharan,
Additional Government Pleader

ORDER

This writ petition has been filed for direction to the respondents to declare that the petitioner's land comprised in land situated at Old S. No. 146/1, T.S.No.19/11, Now T.S. No.19/1B, Block No.4, Ward A, Namakkal Village Namakkal measuring about 1.63 acres is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently to direct the respondents to pass appropriate orders for release of the petitioner's land.

2. The petitioner is the absolute owner of the land comprised in Old S. No. 146/1, T.S.No.19/11, Now T.S. No.19/1B, Block No.4, Ward A, Namakkal Village Namakkal measuring about 1.63 acres. The first respondent vide GO.Ms.No.65 dated 04.03.2004 formed Master Plan in



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Namakkal area, as per which the petitioner's land was earmarked for forming 60 feet scheme road under the detailed development plan. However, no action has been taken by the respondents to acquire the said lands for the above purpose. The case of the petitioner is that if the Government failed to issue declaration as contemplated under Section 37 of the Tamilnadu Town and Country Planning Act, then the land shall be deemed to be released from such reservation, allotment or designation.

3. This Court already dealt with this issue in WP.No.538 of 2022 and by order dated 19.01.2022 observed that the property belonging to the petitioner therein has to be released from the detailed development plan, since it has lapsed under Section 38 of the Act. The relevant portion of the said order is extracted hereunder:

“4. The main issue that has been urged before this Court is that the detailed development plan has lapsed under Section 38 of the Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamil Nadu Gazette.

5. It is not necessary for this Court to consider the entire scheme of the Act, since for the very same detailed



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development scheme, a Division Bench of this Court 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.”

6. This Court has consistently held that if the land has not been acquired within a period of three years from the date of publishing the detailed development plan in the Gazette, the concerned lands shall be deemed to be released from such reservation. It will be beneficial to provide the details of the



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cases, wherein this Court had reached such a conclusion :

1. *M.Amsavalli v. Director of Town and Country Planning reported in (2017) 2 CWC 418.*
2. *RM.Shanmuganathan v. Director of Town and Country Planning reported in (2018) 2 CWC 20.*
3. *W.P.(MD) No.5652 of 2019 (LKS Mohammed Meera Mohaideen v. Director of Town and Country Planning)*
4. *W.A.(MD) No.485 of 2020 (The Director of Town and Country Planning and another v. Muthu and others) and*
5. *W.P.(MD) No.166 of 2021 (Nagendran v. The Director of Town and Country Planning).*

7. In the present case, the detailed development plan was notified under Section 37 of the Act in the year 1991. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.

8. In the result, the property belonging to the petitioner has to be released from the detailed development plan scheme, since it has lapsed under Section 38 of the Act. Accordingly, this writ petition is allowed. No costs.”

4. In view of the above, it is observed that the property belongs to the petitioner herein has to be released from the detailed development



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plan, since it has lapsed under Section 38 of the Act. Accordingly, this writ petition is allowed. There shall be no order as to costs.

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Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
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