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W.P.No. 32570 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.32570 of 2023

Sri Ramakrishna Madam Trust,
Udumalpet Road,
Dharapuram Town,
Dharapuram Taluk,
Tiruppur – 638 656

.. Petitioner

Versus

1. 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

2. The Member Secretary,
Tiruppu Local Planning Authority,
District Town and Country Planning Office,
1st floor, Kumaran Commercial Complex,
Tiruppur – 641 601

3. The Commissioner,
Dharapuram Municipality,
Dharapuram, Tiruppur – 638 656

4. The Land Acquisition Officer,
Tiruppur Local Planning Authority,
1st Floor, Kumaran Commercial Complex,
Tiruppur – 641 601

.. Respondents



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WEB COPY Prayer: Writ Petition filed under Article 226 of Constitution of

India for issuance of a Writ of Declaration to declare that the property to the extent of 0.65 Acre in Ward-7 Block 16, T.S.No.55/4 (Old S.F.No.385/1C3 pt) in Tiruppur Corporation, Dharapuram Taluk, Tiruppur District (“Property”) forming part of the Dharapuram Local Planning area in MAP No.2 DDP/R(S).No.11/93 for C2-C30 Road & A-A 60 Road which was approved by Director of Town and Country Planning, the 1st respondent herein to have lapsed in the light of Section 38 of the Tamilnadu Town and Country Planning Act, 1971 (TN Act 35 of 1972) and the decision of this Court in the case of Kannabiran Vs. The Director of Town and Country Planning in W.P.(MD) No.8515 of 2021 dated 25.06.2021.

For Petitioner : Mr.M.Tanya Jecintha

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



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ORDER

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This petition is filed to issue a Writ of Declaration to declare that the property to the extent of 0.65 Acre in Ward-7 Block 16, T.S.No.55/4 (Old S.F.No.385/1C3 pt) in Tiruppur Corporation, Dharapuram Taluk, Tiruppur District (“Property”) forming part of the Dharapuram Local Planning area in MAP No.2 DDP/R(S).No.11/93 for C2-C30 Road & A-A 60 Road which was approved by Director of Town and Country Planning, the 1st respondent herein to have lapsed in the light of Section 38 of the Tamilnadu Town and Country Planning Act, 1971 (TN Act 35 of 1972) and the decision of this Court in the case of Kannabiran Vs. The Director of Town and Country Planning in W.P.(MD) No.8515 of 2021 dated 25.06.2021.

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

(i)The subject property was donated to the petitioner's Trust vide document no.119/2017 registered at Joint Sub Registrar in Dharapuram since then, the petitioner is in possession and enjoyment of the property. Further, when the petitioner intended to develop the property, the respondents intimated that the petitioner's land to an extent of 0.65 acre



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in Ward-7, Block 16, T.S.No.55/4 (Old S.F.No.385/1C3 pt) in Dharapuram Municipality Taluk, Tiruppur District (Property) forming part of Dharapuram Local Planning area in MAP No.2 DDP/R(S) No.11/93 for C2-C2 30' Road & A-A 60' Road Plan No.11, which was approved by the Director of Town and Country planning, the 1st respondent, has not been acquired till date and remains in the possession and enjoyment of the petitioner.

(ii) Further, as per Section 37 of the Tamilnadu Town and Country Planning Act, 1971, [in short, hereinafter referred to Act] if the Planning authority reserves any lands at the disposal of any private person to be required for any purpose under the detailed development plan, the same can be acquired by the State Government by invoking the provisions of the Land Acquisition act, 1894 (Central Act 1 of 1894). That apart, this Court in the case of Kannabiran Vs.The Director of Town and Country Planning in W.P.(MD) No.8515 of 2021 on 25.06.2021, by relying on the decision of the Hon'ble Division bench of this Court in the case of the Director of Town and Country Planning Vs. Muthu in W.A.(MD) No.485 of 2019 held that on failure to acquire the land under Section 37 of the Act, within 3 years from the date of publication of the Draft



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Development Plan, the reservation made under the detailed development plan lapses and the land stands released. Besides the above, the Hon'ble Supreme Court has also held the same view in the case of Raju Jethmalani Vs. State of Maharashtra reported in 2005 II SCC 222, thereby pleaded to show the same indulgence to the petitioner also, hence this petition.

3. The learned counsel for the petitioner submitted that the development plan automatically lapses on the expiry of three years from the date of publication as per Section 38 of the Act. Hence, prays to allow this petition.

4. Per Contra, the learned Government Advocate appearing for the respondents 1 to 4 submitted that Section 38 of Act, will not be applicable to this case. He further submitted that C2-C2 30' Road and A-A 60' Road Plan for public utility and the purpose of the acquisition is only for the future development in the said area.

5. Before advertng further it is relevant to extract Section 38 of



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the Act and the same is extracted hereunder:

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“ 38. Release of land:- If within three years from the date of the publication of the notice of the Tamil Nadu Government Gazettee under Section 26 or 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 reservation, allotment or designation.”

6. On going through the above provision it is made clear that if no declaration is made as provided under Section 37(2) of the Act, the reservation or allotment or designation of the land for any purpose in the



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development plan will stand released. Therefore, the respondents cannot insist for following the stipulations provided in the development plan as a pre-condition for approval of the layout.

7. In the present case, the detailed development plan was notified and the said lands were not acquired under Section 37 of the Act, within 3 years from the date of Development plan and now, it is more than 20 years and in the light of the orders passed by the Hon'ble Apex Court, Hon'ble Division Bench of this Court and this Court, in the cases mentioned supra, by operation of the Section 38 of the Act, the scheme is lapsed and the property belonging to the petitioner has to be released from the detailed plan scheme. It is made clear that if any road has been laid, the same shall be retained by the Local body.

Accordingly, this Writ Petition is disposed of. No costs.

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Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
ssd



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V.BHAVANI SUBBAROYAN, J.

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