



WEB COPY

W.P.No.33891 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.33891 of 2023

K.Habbis Mohamed

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Petitioner

versus

1.The Joint Director, Town & Country Planning,
District Town & Country Planning Office,
Coimbatore.

2.The Member Secretary,
Coimbatore Local Planning Authority,
Office of Local Planning Authority,
Coimbatore.

3.The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring the properties comprised in Old Survey Nos.750/4 and 750/5 as per patta New Survey Nos.750/4B & 750/5, measuring to an extent of 10918 sq.ft or 25 cents and 028 sq.ft or 1014.31 Sq.mt, situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District (property) forming part of MAP No.3 DDP/(C.N.R)D.T.C.P. No.95(consent) dated 18.04.1995 for Coimbatore



Local Planning Area Kalapatti Detailed Development Plan No.20, which was approved for the public purpose of childrens' play space by the first respondent to have lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) and the various decisions of this Hon'ble Court in W.P. (MD) No.8515 of 2021 dated 25.06.2021 W.P.No.106/2022 dated 07.01.2022, W.P.No.538/2022 dated 19.01.2022, W.P.No.1466/2022 dated 04.02.2022, W.P.(MD)No.424/2022 dated 14.03.2022, W.P.Nos.4948,4951 & 4406/2022 dated 30.03.2022, W.P.No.30169/2022 dated 25.01.2023, W.P.7862/2023 dated 29.03.2023, W.P.No.11410 of 2023 dated 13.04.2023, W.P.No.12484/2023 dated 24.04.2023, W.P.No.17284/2023 dated 12.06.2023, W.P.No.19532/2023 dated 30.06.2023 and W.P.23851/2023 dated 22.08.2023.

For Petitioner	:	Mr.P.Tamilmani
For Respondent Nos.1 & 2	:	Mrs.C.Meera Arumugam Additional Government Pleader
For Respondent No.3	:	Mr.N.Umapathi Standing Counsel

ORDER

This Writ Petition has been filed for issuance of a Writ of declaration, declaring the properties in Old Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 measuring to an extent of 25 cents, situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District, earmarked as children's play space for the public purpose in Kalapatti Detailed



Development Plan No.20, in view of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971.

2. The case of the petitioner is that the properties in Old Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District, originally belong to the petitioner's predecessor. While so, a proposal was established in the name of 'Detailed Development Plan' for Kalapatti Village. The Government has notified the same through Gazette notification as Kalapatti Detailed Development Plan No.20. On such notification, the Government had notified/reserved the lands in Old Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 measuring to an extent of 25 cents, situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District. Once the Detailed Government Plan comes into operation, the Government has to acquire the land under Section 36 of the Tamil Nadu Town and Country Planning Act and appropriate compensation has to be provided under Section 39 of the Tamil Nadu Town and Country Planning Act, within the period of three years. Even after lapse of ten years, till today no acquisition has been made. Therefore, the present case falls under Section 38 of the Tamil Nadu Town and Country Planning Act. Hence, the lands in Old



Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 are deemed to be released.

3. The learned counsel appearing for the petitioner has relied on a decision of this Court in W.P.(MD).No.10659 of 2012, dated 10.12.2012.

The relevant portion of the order reads as follows:-

“8. In this regard, useful reference could made to a decision reported in (2008) 2 MLJ 184 (K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another), wherein it has been held as follows:-

“9. On the facts and circumstances of the present case, the petitioners have clearly stated in the affidavit, that even under the old Act VII of 1920, no steps were taken for the purpose of completing the acquisition within three years and the same has not been denied in the counter affidavit filed by the first respondent. Even assuming that the said Scheme has been taken over under the Act 35 of 1972, even from the date of coming into effect of the Act within the period stipulated under Section 38, no steps have been taken by the respondents for acquiring the property for the purpose of “open space” stated to have been reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai sanctioned under G.O.Ms.No.474 LA dated 02.03.1969.”



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9. Therefore, the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed. No costs.”

4. Following the same, this Court is of the view that the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed and the respondents are directed to release the land in Old Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 measuring to an extent of 25 cents, situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District, forming part of Kalapatti Detailed Development Plan No.20, by virtue of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs.

08.04.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri

To

5/7



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District Town & Country Planning Office,
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V.BHAVANI SUBBAROYAN, J.

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