



WEB COPY

W.P.No.518 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.518 of 2024
& W.M.P.Nos.526 & 528 of 2024

1.R.Venkatachalam
2.R.Sasikala
3.R.Vidhyasagar
4.C.Vijayarani

...

Petitioners

versus

1.The State of Tamil Nadu,
Rep. by Secretary,
Housing and Urban Development,
Fort St. George,
Chennai - 600 009.

2.The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor,
CNE Market Road,
Koyambedu,
Chennai - 600 107.

3.Deputy Director,
District Town and Country Planning Office,
1st Floor, Kumaran Commercial Complex,
Tiruppur - 641 601.



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4. The Commissioner,
Udumalpet Municipality,
Udumalpet.
5. The District Collector cum Chairman,
Local Planning Authority,
Tiruppur District, Tiruppur.
6. The Member Secretary,
Udumalaipet Local Planning Authority,
Udumalpet.
7. The Sub Registrar,
Udumalaipettai, Tiruppur.
8. The District Revenue Officer,
O/o. The Tiruppur District Collector,
Tiruppur.
9. Executive Officer,
Kanakampalayam Town Panchayat,
Udumalaipettai, Tiruppur. ...

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd to 6th respondents to release the petitioners land situate in S.F.No.209 comprised an extent of 0.98 Acres, Kanakampalayam Village Ward E / Old Ward No.24/ New Ward No.33 / Old Block No.5 / New Block No.18 / Old T.S. No.32 (Part) / Old T.S.No.12/2A2/ Now New T.S. No.12/3, Udumalpet Municipal Limit, Udumalpet Taluk, Tiruppur District, from reservation which was earmarked for park in the Udumalaipettai Detailed Development Plan No.1 as lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971



(TN Act 35 of 1974) and consequently direct the Respondents 2 to 7 to reclassify the aforesaid land as residential land.

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For Petitioners	:	Mr.P.Tamilavel
For Respondent Nos.1 to 3, 5, 7 & 8	:	Mrs.C.Meera Arumugam Additional Government Pleader
For Respondent Nos.4 & 9	:	Mr.D.Ravichandran

ORDER

This Writ Petition has been filed for issuance of a Writ of Mandamus, directing the respondents 2 to 6 to release the petitioners land in S.F.No.209 comprised an extent of 0.98 Acres, Kanakampalayam Village Ward E / Old Ward No.24 / New Ward No.33 / Old Block No.5 / New Block No.18 / Old T.S. No.32 (Part)/ Old T.S.No.12/2A2/ Now New T.S.No.12/3, situated at Udumalpet Municipal Limit, Udumalpet Taluk, Tiruppur District, earmarked for park in the Udumalaipettai Detailed Development Plan No.1, by virtue of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 and also direct the respondents 2 to 7 to reclassify the aforesaid land as residential land.

2. The case of the petitioners is that the properties in S.F.No.209 comprised an extent of 0.98 Acres, Kanakampalayam Village Ward E / Old Ward No.24 / New Ward No.33 / Old Block No.5 / New Block No.18 / Old



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T.S. No.32 (Part)/ Old T.S.No.12/2A2/ Now New T.S.No.12/3, situated at Udumalpet Municipal Limit, Udumalpet Taluk, Tiruppur District, originally belong to the petitioners' predecessor. While so, the petitioners approached the 3rd respondent for developing the land. But it was stated by the 3rd respondent that the subject land was reserved for scheme development park as per Udumalaipettai Detailed Development Plan No.1.

3. The learned counsel for the petitioners has relied upon the judgment of the Division Bench of this Court in the case of ***J.Amsaveni Vs. State of Tamil Nadu*** reported in ***2023(4) CTC 851*** wherein it is held that there is no transfer of land but only restriction on use. The records reveal that the proposal for removing the area from being a catchment area was also considered atleast a decade ago, and rejected. According to them, Sections 26, 27 & 38 apply where, at the time of making the plan, the land is reserved, allotted, or designated for use by the State for the creation of Public Utility areas like roads, parks, community halls, etc. If these areas are not acquired, then the reservation under the plan lapses and the owner gets the right to develop it in a manner he deems fit. Even then, the development



must be in accordance with the plan. As long as the plan exists, the owner cannot claim a right to raise a construction.

4. In the present case, the lands that have been earmarked for a scheme development park are not acquired by the respondents and the reservation under the plan lapses, and the owner gets a right to develop the same. Hence, this Court is of the view that the planning authorities cannot form any development regularisation in the catchment area after the lapses of the said period and the petitioners are entitled to utilise the same but as per the permission granted for development and not otherwise.

5. 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 land in S.F.No.209, is deemed to be released.



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6. Hence, 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 S.F.No.209 comprised an extent of 0.98 Acres, Kanakampalayam Village Ward E / Old Ward No.24/ New Ward No.33 / Old Block No.5 / New Block No.18 / Old T.S. No.32 (Part) / Old T.S.No.12/2A2/ Now New T.S.No.12/3, Udumalpet Municipal Limit, Udumalpet Taluk, Tiruppur District, forming part of Udumalaipet Detailed Development Plan No.1, 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. Consequently, connected Miscellaneous Petitions are closed.

08.04.2024

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The Secretary
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Housing and Urban Development,
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Chennai - 600 009.
- 2.The Director,
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2nd, 3rd and 4th Floor,
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- 7.The Sub Registrar,
Udumalaipettai, Tiruppur.
- 8.The District Revenue Officer,
O/o.The Tiruppur District Collector, Tiruppur.
- 9.The Executive Officer,



W.P.No.518 of 2017



Kanakkampalayam Town Panchayat, Udumalaipettai, Tiruppur.

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V.BHAVANI SUBBAROYAN, J.

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