



W.P.(MD)No.15534 & 15535 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)Nos.15534 & 15535 of 2024
and W.M.P.(MD)Nos.13590 & 13598 of 2024

C.S.Siddarth

... Petitioner in
both W.Ps.

Vs.

- 1.The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor,
C and E Market Road, Koyambedu,
Chennai – 600 107.
- 2.Member Secretary,
Tiruchirappalli Local Planning Authority,
Tiruchirappalli.
- 3.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Bharathidasan Salai,
Cantonment,
Tiruchirappalli.
- 4.The Assistant Commissioner,
Srirangam Ward Committee Office - I,
Srirangam Zone,
Tiruchirappalli City Municipal Corporation,
Srirangam, Tiruchirappalli.



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5. The Sub-Registrar,
Srirangam,
Tiruchirappalli District.

.... Respondents in
both W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration to declare the Detailed Development Plan - Bye pass Road Detailed Development Plan No.V, Tiruchirappalli Corporation, Tiruchirappalli Local Planning Area, got lapsed and further direct the 3rd Respondent herein to cancel the Gift Deeds dated 21.02.2014 and 10.03.2015 bearing Doc.No.825/2014 and Doc.No.880/2015, in Book No.1, in the office of the 5th Respondent in so far as it relates to item Nos.1 and 2 mentioned therein and thereby release such lands as provided under Section 38 of the Town and Country Planning Act, 1971.

For Petitioner
(In both W.Ps)

: Mr.V.P.Sengottuvel, Senior Counsel
for Ms.V.Muthu Kamatchi

For Respondents
(In both W.Ps)

: Mr.A.Kannan,
Addl. Govt. Pleader for R1

Mr.R.Baskaran, Senior Counsel
Assisted by Mr.K.R.Kishoreram,
for RB Law Associates for R2 to R4

Mr.C.Satheesh,
Govt. Advocate for R5



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COMMON ORDER

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Since the issues involved in both the Writ Petitions are one and the same, both the Writ Petitions are taken up together, heard and disposed of by this common order.

2. These Writ Petitions have been filed seeking for issuance of a Writ of Declaration to declare the Detailed Development Plan - Bye pass Road, Detailed Development Plan No.V, Tiruchirappalli Corporation, Tiruchirappalli Local Planning Area, got lapsed and further direct the 3rd Respondent herein to cancel the Gift Deeds dated 21.02.2014 and 10.03.2015 bearing Doc.No.825/2014 and Doc.No.880/2015, in Book No.1, in the office of the 5th Respondent in so far as it relates to item Nos.1 and 2 mentioned therein and thereby release such lands as provided under Section 38 of the “Tamil Nadu Town and Country Planning Act, 1971” (hereinafter referred to as “the Act”).

3. It is the case of the Writ Petitioner that the subject property belonged to the petitioner's family concern. The subject properties are notified for the Detailed Development Plant No.V, Tiruchirappallai Corporation, Tiruchirppalli



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Local Planning Area under Section 37 the Act. According to the petitioner, the subject lands have not been acquired within five years from the date of publication of notice of the preparation of Detailed Development Plan in the Government Gazette. Hence, as per Sections 37 and 38 of the Act, the lands reserved and allotted are deemed to be released from such reservation. Hence, the petitioner has filed these Writ Petitions seeking for the aforesaid relief.

4. Further, it is the case of the petitioner that when the petitioner applied for planning permission for construction of a show room cum service station in the subject lands, the authorities insisted the petitioner to execute a gift deed in respect of the roads earmarked in the Detailed Development Plan. Accordingly, the petitioner has executed gift deeds dated 21.02.2014 and 10.03.2015 in respect of G4-G4 and G5-G5 Roads. As the Detailed Development Plan got lapsed, the gift deeds are not valid. Hence, the petitioner has filed these Writ Petitions seeking for a direction to cancel the gift deeds executed in favour of the respondents.

5. The third respondent has filed a common counter affidavit to the effect that the property comprised in T.S.No.2570/2 part, T.S.No.2569 part, T.S.No.



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2572/2part, T.S.No.2568 part, T.S.No.2574 part, T.S.No.2573 part, T.S.No.2578 part, T.S.No.2579 part, 2638 part, T.S.No.2639 part and T.S.No.2661 part including the petitioner's property situate in T.S.No.2572/2 measuring an extent of 745 sq.ft., T.S.No.2573 measuring an extent of 3713 sq.ft, T.S.No.2578 measuring an extent of 2760 sq.ft and T.S.No.2579 measuring an extent of 1425 sq.ft totally admeasuring an extent of 8643 sq.ft is earmarked as G4-G4 road in Detailed Development Plan - V, which is also proposed road and streets to be formed by the owners and the property comprised in T.S.No.2602 part, T.S.No.2599 part, T.S.No. 2598/2 part admeasuring an extent of 660 sq.m. (7,101,6 sq.ft) T.S.No.2598/2 admeasuring an extent of 385.42 sq.m. (16,860 sq.ft) is earmarked as G5-G5 road in Detailed Development Plan - V, which is also proposed roads and streets to be formed by the owners. The petitioner claiming to be the owner of the said property was well aware of the same. Further, the said road leads to the lands situate behind the petitioner's land and there is no other approach road from the land. The petitioner had approached the DTCP for obtaining planning permission for construction of building and the same was approved vide proceedings in Na.Ka.2005/06/F1/Sri dated 26.02.2010, wherein a condition was imposed that the petitioner's property have to be gifted for the purpose of proposed G4-G4 and G5-G5 30 feet roads. The third respondent has acquired the subject lands by way of



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gift deeds dated 21.02.2014 and 10.03.2015. Therefore, the lands are vested upon the third respondent and the revenue records are also mutated. As per Section 38 of the Act, 1971, non-acquisition of certain lands earmarked for such reservation, allotment or designation would not render the whole DDP as lapsed. Only those earmarked land, which was not acquired as per Section 37(2) of the Act, would be released. In the present case, the land in question was acquired by way of gift deeds as stated in the above paragraphs. Hence, opposed these Writ Petitions.

6. The learned Senior Counsel appearing for the petitioner would submit that as per Section 38 of the Act, when the land earmarked for a detailed development has not been acquired, within a period of five years from the date of publishing the detailed development plan in the Gazette, the lands covered under the Gift deeds shall be deemed to be released from such reservation. Further, it is the contention of the petitioner that since the area was already shown under the development plan, the petitioner has executed gift deeds in order to get the planning permission. Hence, once the entire notification has got lapsed, the gift deeds obtained by the respondents are also not valid in the eye of law.



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7. Whereas, the learned Senior Counsel appearing for the respondents Corporation 2 to 4 would submit that though the lands shown in the Detailed Development Plan were not acquired within the 5 years period, in this case, while developing the land, the petitioner himself has executed gift deeds. Therefore, the documents cannot be cancelled.

8. Heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

9. It is not disputed that the detailed development plan was notified in the year 2002, not only in the petitioner's land as well as other survey numbers. It is also not disputed that the land has not been acquired within a period of five years as per Section 38 of the Act. It is relevant to note that if the land notified under the development plan has not been acquired within a period of five years as per Section 38 of the Act, the scheme would automatically lapse and the property notified in the plan shall be deemed to be released from such reservation. It will be beneficial to provide the details of the cases, wherein this Court had reached such a conclusion :

1. ***M.Amsavalli v. Director of Town and Country Planning*** reported in



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(2017) 2 CWC 418.

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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).***

10. Section 38 of the Tamilnadu Town and Country Planning Act reads as follows :

“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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11. It is also to be noted that when the petitioner applied for planning permission for construction of the showroom, the plan has been approved subject to the condition that the petitioner shall execute gift deeds in respect of 30 feet road shown as G4-G4 and G5-G5 roads. Since the road has been shown in the development plan, the authority has insisted for execution of the gift deeds. As the development plan also covers that road, the petitioner has no other go other than executing the document as demanded by the respondents. Accordingly, the gift deeds were executed by the petitioner in favour of the respondents. It is the main contention of the learned Senior Counsel appearing for the respondents 3 and 4 that while developing the land, the petitioner themselves sought permission and executed the gift deeds. According to the them, as per Section 49 of the Act, the petitioner themselves made an application for construction of the building. It is relevant to note that the petitioner has just applied for construction of the show room and building except that there is no other development like forming a layout etc., to leave certain areas for the benefit of plot owners like open space reservation area, Park, community hall area etc. That situation is not arisen in this case. The petitioner as usual has obtained ordinary permission for construction of the building and therefore, the contention of the respondents that Section 49 of the Act will apply in the present has no force. The lands have not been developed for



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any specific purpose and only building permission is sought. The authorities while granting permission, taking note of the fact that the survey number was already notified under Section 19 of the Act for detailed development plan, has insisted and got the gift deeds. Now the very development plan itself got lapsed by operation of law and the purpose of executing the gift deeds will not serve any purpose. Therefore, merely because when the land itself was gifted for specific purpose and the purpose has not been achieved, the respondent cannot claim over that land claiming ownership over the property. Therefore, this Court is of the definite view that it has to be re-conveyed or the gift deeds have to be cancelled.

12. In *Kolkata Municipal Corporation and another Vs. Bimal Kumar Shah & Ors* in *Civil Appeal No.6466 of 2024*, the Hono'ble Apex Court has held that the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole and not just one or many of its strands. Paragraphs 26 to 28 of the said judgment read as follows:

“26.The constitutional discourse on compulsory acquisitions, has hitherto, rooted itself within the 'power of eminent domain'. Even



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within that articulation, the twin conditions of the acquisition being for a public purpose and subjecting the divestiture to the payment of compensation in lieu of acquisition were mandated. Although not explicitly contained in Article 300A, these twin requirements have been read in and inferred as necessary conditions for compulsory deprivation to afford protection to the individuals who are being divested of property. A post-colonial reading of the Constitution cannot limit itself to these components alone. The binary reading of the constitutional right to property must give way to more meaningful renditions, where the larger right to property is seen as comprising intersecting sub-rights, each with a distinct character but interconnected to constitute the whole. These sub-rights weave themselves into each other, and as a consequence, State action or the legislation that results in the deprivation of private property must be measured against this constitutional net as a whole, and not just one or many of its strands.

27. What then are these sub-rights or strands of this swadeshi constitutional fabric constituting the right to property? Seven such sub-rights can be identified, albeit non-exhaustive. These are: i) duty of the State to inform the person that it intends to acquire his property - the right to notice, ii) the duty of the State to hear objections to the acquisition - the right to be heard, iii) the duty of the State to inform the person of its decision to acquire - the right to a reasoned decision, iv) the duty of the State to demonstrate that the acquisition is for public purpose - the duty to acquire only for public purpose, v) the duty of the State to restitute and rehabilitate - the right of restitution or fair compensation, vi) the duty of the State to conduct the process of acquisition efficiently and within prescribed timelines of the proceedings - the right to an efficient and expeditious process, and vii) final conclusion of the proceedings leading



to vesting - the right of conclusion.

28. *These seven rights are foundational components of a law that is tune with Article 300A, and the absence of one of these or some of them would render the law susceptible to challenge. The judgment of this Court in K.T. Plantations (supra) declares that the law envisaged under Article 300A must be in line with the overarching principles of rule of law, and must be just, fair, and reasonable. It is, of course, precedentially sound to describe some of these sub-rights as 'procedural', a nomenclature that often tends to undermine the inherent worth of these safeguards. These seven sub-rights may be procedures, but they do constitute the real content of the right to property under Article 300A, noncompliance of these will amount to violation of the right, being without the authority of law."*

13. The following seven principles have seamlessly become an integral part of our Union and State statutes concerning acquisition and also the constitutional and administrative law culture that our Courts have evolved from time to time, which are as follows:

- 1.The Right to notice
2. The Right to be heard
3. The Right to a reasoned decision
4. The Duty to acquire only for public purpose
5. The Right of restitution of fair compensation



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6. The Right to an efficient and Expeditious process

7. The Right of conclusion

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14. If any of these sub-rights are violated, the action of the State cannot be sustained. The very gift deeds itself obtained for the purpose of laying the road. Whereas the very scheme itself has lapsed by operation of law. Therefore, the very purpose got defeated by operation of law. Therefore, still the authorities cannot claim that they are the owner of the property. Accordingly, this Court hold that the respondents are liable to reconvey the property or cancel the gift deeds. The Division Bench of this Court in W.A.No.1448 of 2017, has held as follows:

“8.In Tahsildar Pollachi and another vs.P.Bagyalakshmi, judgment dated 30 October 2017, in W.A.No.836 of 2017, a similar issue regarding gift of land for constructing school building and the claim for return of the land on the ground of non utilization came up for consideration before this Court. While directing the Government to consider the request, this Court made the following observation:-

The gift of the land was given for a specific purpose. The construction of school building in the name of the donor was the sole object of the gift. There is a marked difference between acquisition of land and the demand for reconveyance later on account of the failure to utilise the land for the purpose for which it was acquired and a gift of land for a particular public purpose and claim made by the donor for return of land on the ground



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that the land was not used for the particular purpose for which it was gifted. In case, it is a compulsory acquisition for a public purpose, the scope of re-conveyance under Section 48-B is very limited. The Government must be satisfied that the land was not used for the specific purpose and it is not necessary for any other public purpose. Then only, the question of reconveyance would arise. However, in a case of this nature, when the purpose of gift failed to materialise, the donor would be justified in claiming the land back. There is no right for re-conveyance under Section 48-B of the Land Acquisition Act, 1894. There is only a right to consider the request for re-conveyance. However, that is not the case in case it is a conditional gift for construction of school building, hospital, etc., and on account of subsequent events or efflux of time, the object is no more in existence. In case a request is made by the donor on account of the non-accomplishment of the purpose for which gift of land was given, the Government must consider such request giving due weight to the wishes of the donor which executing the gift deed donating the land for the purpose indicated therein.

9. Similar issue came up for adjudication before the Division Bench of the Madurai Bench of this Court in M.Thiyagarajan v. The State of Tamil Nadu and others [2017-2-Writ L.R.349]. The donors gifted about 25 acres of land of establishing Karur Government Medical College at Kuppuchipalayam Village. The Government accepted the gift and issued an order sanctioning funds for construction of medical college. The Public Works Department awarded contract to a local contractor for construction. Subsequent inspection of land



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by the Director of Medical Education found that the land was not fit for establishing a medical college on account of its locational disadvantages. The Government therefore decided to take another land owned by a Religious institution in exchange of the gifted land. In the meanwhile, Karur Municipality, resolved to allot 20 acres of its prime land in Karur Town for construction and establishment of Government Medical College. While so, the donors, the contractor and a local politician filed writ petitions before the Madurai Bench to direct the Government to establish the medical college at the land gifted by the donor. The Writ Court granted interim stay and restrained the Government from changing the location. Another writ petition was filed in public interest to accept the municipal land. The Division Bench following the judgment of the Hon'ble Supreme Court in Abraham T.J. V. The State of Karnataka [2017 (7) Scale 641] held that it is the prerogative of the Government to select the land for establishing medical college and there is no legal right to claim that only the land gifted by the donor should be used for the public purpose. While dismissing the writ petition filed by the donors and upholding the decision taken by the Government to accept the land offered by the Karur Municipality, the Division Bench directed the Government to return the gifted land to the donors on account of the subsequent events.”

15. Such view of the matter when the purpose has not been achieved, the lands are deemed to be released as per statute. The gift deeds executed by the



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petitioner, for the purpose of laying road, which has not been laid, assumes significance. Therefore, the same has to be cancelled by the respondents Corporation.

16. Accordingly, these Writ Petitions are allowed and the third respondent is directed to cancel the gift deeds dated 21.02.2014 and 10.03.2015 executed by the petitioner and to release such lands, within a period of one month from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.10.2024

NCC : Yes/No
Index : Yes/No
vsm



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1. The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor,
C and E Market Road, Koyambedu,
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