



WP(MD). No.20076 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 29/08/2024

CORAM

The Hon`ble Mr.Justice N.SATHISH KUMAR

WP(MD). No.20076 of 2024

Shanmugasundaram

... Petitioner

Vs

1. The Director,
Directorate of Town and Country Planning,
2nd, 3rd and 4th Floor, C and E Market Road,
Koyembedu, Chennai 600 107.

2. The Member Secretary,
Trichy Local Planning Authority,
Kajamalai Main Road, Kajamalai,
Trichy 620 023.

... Respondents

PRAYER :- Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Mandamus directing the respondents no. 1 and 2 to release the petitioners land with an extent of 26 cents in Town Survey Number 838 situated at Ward 3, Vellithirumutham Village, Srirangam, Trichy District treating the Trichy Bye Pass Detailed Development Plan No. 3 as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act 1971.



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For Petitioner : Mr.R.Karunanidhi,
For Respondent : Mr.D.Gandhiraj
Special Government Pleader

ORDER

This writ petition has been filed to direct respondents no. 1 and 2 to release the petitioners land with an extent of 26 cents in Town Survey Number 838 situated at Ward 3, Vellithirumutham Village, Srirangam, Trichy District treating the Trichy Bye Pass Detailed Development Plan No. 3 as lapsed under Section 38 of the Tamil Nadu Town and Country Planning Act 1971.

2. It is the contention of the writ petitioner that the lands of the petitioner though was approved in Detailed Development Plan No.3, the property has not been acquired till date and remains in the petitioner's possession and enjoyment. Hence, it is his contention that as per Section 38 of Tamil Nadu Town and Country Planning Act, 1971, if such acquisition is not made within a period of three years from the date of publication of the detailed development plan, the land will be deemed to have been released from such reservation from the detailed development plan. Hence, according to him, no such acquisition has been made within a period of three years, hence, the writ petition.



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3. I have considered the rival submissions and perused the materials available on record.

4. It is not necessary for this Court to dwell much on the entire allegation in the Writ Petition, since for the very same detailed 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 Tamil Nadu Town and Country Planning 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.



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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.”

5. 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 Government Order, the concerned lands 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 (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



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5. W.P.(MD) No.166 of 2021 (Nagendran v. The Director of Town and Country Planning).

6. 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.

7. In the present case, the detailed development plan was notified under Section 37 of the Act in the year 2002. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the reservation is released from the detailed plan.



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8. However, it is admitted case that the land has not been acquired within a period of three years. In such view of the matter, as per Section 38 of the Tamilnadu Town and Country Planning Act, the petitioner's land shall be released from the development plan. It is also made it clear that in future, if the Government intends to acquire the land for any purpose or for future development, this order will not be a bar for the Government in view of the provision of Land Acquisition Act, in that case, it is for the authorities to proceed under land acquisition by following due process of law.

9. Accordingly, this writ petition is allowed. No costs.

29.08.2024

NCC : Yes/No
Index : Yes/No

RR

To
1. The Director,
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and E Market Road,
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N.SATHISH KUMAR,J

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