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W.P.(MD)No.25028 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.(MD)No.25028 of 2024

1.Rama
2.Srithi
3.Padmini

... Petitioners

Vs.

1.The Director,
O/o.Town and Country Planning,
2nd, 3rd & 4th Floor, C Market Road,
Koyembedu, Chennai-600107.

2.The Joint Director/Member Secretary,
Town and Country Planning, Trichy Region,
NO.11, Kajamalai main Road,
Thamarai Nagar, Kajamalai Colony,
Trichy, Thiruchirapalli District.

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration, to declare the reservation made in respect of the petitioners' land situated at Srirangam Town Ward C, Block No.1, Vellithirumutham Village, TS.No.5/4D35A3, 5/15 & 5/16 forming part of Tiruchirapalli Local Planning Area Bye-Pass Road, Detailed Development Plan No.1, (Map No. 5) DDTP (V)/DTCP/Spl.CTCP.No.25/2001 dated 16.05.2001 has been lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 within the period that may be stipulated by this Court.

For Petitioners
For Respondents

: Mr.K.Viralinathan
: Mr.D.Gandhiraj
Special Government Pleader



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ORDER

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This writ petition has been filed to declare the reservation made in respect of the petitioners' land forming part of the Tiruchirapalli Local Planning Area Bye-Pass Road, Detailed Development Plan No.1, as lapsed in light of section 38 of the Tamil Nadu Town and Country Planning Act, 1971 within the period that may be stipulated by this Court.

2. It is the case of the petitioners that the subject property is the ancestral property of the husband of the third petitioner. After his demise, the petitioners have inherited those properties and enjoying the same. The petitioners decided to jointly develop the subject properties. They have applied for getting building plan approval with draft plan, which was denied by the authorities concerned on the ground that the petitioners' land comes under the “Tiruchirapalli Local Planning Area Bye-Pass Road, Detailed Development Plan No.1,”. Though the said plan was published in the year 2001, till now, no further proceedings has been taken and no declaration has been made under Section 37(2) of Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as 'the Act') within three years from the date of such notice. Therefore, the land reservation deemed to be is lapsed as per Section 38 of the Act. Hence, he filed this Writ Petition with the aforesaid prayer.



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3. The learned Special Government Pleader appearing for the respondents would submit that the petitioners have to make an application to release their land and the same would be considered on merits within the stipulated time to be fixed by this Court.

4. Heard the learned counsel appearing on either side and perused the materials placed on record.

5. It is relevant to extract Sections 37 and 38 of the Act for easy reference:-

“37.Power to purchase or acquire lands specified in the development plan.-

(1)Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1984):

Provided that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.



(2) On receipt of an application made under subsection (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

Provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

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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6. A perusal of the above Sections make it very clear that within three years from the date of publication of the notice, if no acquisition of land is made 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, such land shall be deemed to be released from such reservation, allotment or designation. Though the proviso also enables the Government to issue notification extending the period, till date, no such notification has been issued.

7. In such view of the matter, as the land has not been acquired within the mandatory period as per the above section, the said land shall be deemed to be released from such reservation. Accordingly, the respondents shall release the land of the petitioners, if there is no such notification issued.

8. With the above direction, this Writ Petition is disposed of. No costs.

22.10.2024

NCC : Yes/No
Index : Yes/No
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N.SATHISH KUMAR, J.

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