



W.P.(MD)No.25643 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.11.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE G.K.ILANTHIRAIYAN**

W.P.(MD)No.25643 of 2024

1.S.Esakki Raja
2.S.Karunanithi

... Petitioners

/Vs./

1.The Director / Commissioner,
Directorate of Town and Country Planning,
Chepauk,
Chennai 600 006.

2.The Member Secretary / Joint Secretary,
Tirunelveli Local Planning Authority,
Tirunelveli 05.

3.The Tirunelveli City Municipal Corporation,
Represented by its Commissioner,
Tirunelveli City.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring the Tirunelveli L.P.A., Perumalpuram Extension detailed development plan - 10 comprehensive variation Map No.5 issued by the 1st respondent in DDP(V)/ DTCP/Spl. CTCP No.24/2001 vide proceedings in Roc.No. 15623/99 DP2 dated . 05.2001 earmarking the petitioners' property in survey no.655/2, Town



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survey No.43/1 measuring 12 cents and survey no.655/2, Town survey No.43/2 measuring 9 cents situated in Kulavanigarapuram Part-4, Ward BP, Melapalayam Town, Palayamkottai Taluk, Tirunelveli District as Children's Playground as lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

For Petitioners : Mr.R.J.Karthick

For Respondents : Mr.D.Gandhiraj (R1 & R2)

Special Government Pleader

Mr.S.P.Maharajan (R3)

Special Government Pleader

ORDER

This writ petition has been filed for Writ of Declaration declaring Tirunelveli L.P.A., Perumalpuram Extension Detailed Development Plan - 10 comprehensive, variation Map No.5 issued by the 1st respondent in DDP(V)/ DTCP/Spl. CTCP No.24/2001 vide proceedings in Roc.No. 15623/99 DP2 dated .05.2001 earmarking the petitioners' property in S.No.655/2, Town S.No.43/1 measuring 12 cents and S.No.655/2, Town S.No.43/2 measuring 9 cents situated in Kulavanigarapuram Part-4, Ward BP, Melapalayam Town, Palayamkottai Taluk, Tirunelveli District as



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Children's Playground as lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The first petitioner purchased the property in S.No.655/2, Town S.No.43/1 measuring 12 cents, situated in Kulavanigarpuram Part-4, Ward BP, Melapalayam Town, Palayamkottai Taluk, Tirunelveli District, by registered sale deed dated 02.09.2014 vide Document No.5355 of 2014. He has also executed a settlement deed dated 14.07.2015 in favour of the second petitioner, who is his brother, vide Document No.4163 of 2015. The first petitioner thereafter purchased the property in S.No. 655/2, Town S.No.43/2 measuring 9 cents situated in Kulavanigarpuram Part-4, Ward BP, Melapalayam Town, Palayamkottai Taluk, Tirunelveli District, vide sale deed dated 07.09.2021 vide Document No.6947/2021. After purchase, both the petitioners are in possession and enjoyment of the subject property.



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4. While being so, the second petitioner has executed a power of attorney deed dated 21.12.2021 vide Document No.134/2021 in favour of the first petitioner to deal with the subject property. When the first petitioner intended to develop the subject property, the third respondent informed that the subject property has been shown as Children's play ground under Tirunelveli L.P.A., Perumalpuram Extension Detailed Development Plan – 10. However, sofar the said property has not been acquired for development of children's playground. The aforesaid plan was issued in the year 2001. Even after lapse of 23 years, the respondents failed to acquire the subject property.

5. It is relevant to extract the provision under Section 38 of Tamil Nadu Town and Country Planning Act, 1971, which 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



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(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.”

6. Accordingly, if a particular land is not acquired by the agreement, such land will be deemed to be released from such reservation or allotment or designation. In spite of the aforesaid plan was issued in the year 2001 itself, there is no acquisition so far in respect of the subject property by the authorities concerned for the purpose of children's playground.

7. This issue has already been dealt with by the Hon'ble Division Bench of this Court recently in ***WA.(MD)No.485 of 2020*** by judgment dated ***21.07.2020***, wherein it was held that the scheme itself is lapsed by virtue of Section 38 of Tamil Nadu Town and Country Planning Act, 1971, and the relevant portion of the judgment is 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



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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.

12. It is also brought to the knowledge of this Court that the writ appeal filed by the official respondents in W.A.(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.”

8. The above judgment is squarely applicable to the case on hand, since the subject property was notified under Section 37 of Tamil Nadu Town and Country Planning Act, 1971 in the year 2001 and thereafter, the respondents did not take any steps to acquire the subject property even till today.

9. In view of the above, the subject property in S.No.655/2, Town S.No.43/1 measuring 12 cents and S.No.655/2, Town S.No.43/2



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measuring 9 cents situated in Kulavanigarpuram Part-4, Ward BP, Melapalayam Town, Palayamkottai Taluk, Tirunelveli District is declared as lapsed in light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 and this writ petition is allowed. No costs.

Index : Yes / No
NCC : Yes / No
Sm

13.11.2024

TO:-

- 1.The Director / Commissioner,
Directorate of Town and Country Planning,
Chepauk,
Chennai 600 006.
- 2.The Member Secretary / Joint Secretary,
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Tirunelveli 05.
- 3.The Tirunelveli City Municipal Corporation,
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G.K.ILANTHIRAIYAN, J.

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Order made in
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Dated:
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