



W.P.(MD)No.27678 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **20.11.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE L.VICTORIA GOWRI**

W.P.(MD)No.27678 of 2024

Padmapriya

... Petitioner

Vs.

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

2. The Commissioner,
Madurai Corporation,
Madurai.

3. The Member Secretary,
Madurai Local Plainning Authority,
Madurai Corporation, Madurai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Declaration to declare the reservation in respect of the petitioner's land comprised in Survey Nos.334/2 (T.S.No.8/8) to an extent of 65 cents situated at Madakulam Village, Thirupparankundram Taluk, Madurai District, forming part of the Madakulam Detailed Development Plan No.2 to have lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.



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For Petitioner : Mr.T.Palanisamy
For R-1 & R-3 : Mr.T.Amjed Khan
Government Advocate
For R-2 : Mr.K.Mani Sekaran
Senior Counsel

ORDER

The prayer in the Writ Petition reads as follows:-

“declare the reservation in respect of the petitioner's land Survey Nos. 334/2 (T.S.No.8/8) to an extent of 65 cents, situated at Madakulam Village, Thirupparankundram Taluk, Madurai District, forming part of the Madakulam Detailed Development Plan No.2 to have lapsed in the light of Section 38 of Tamil Nadu Town and Country Planning Act, 1971.”

2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. Heard the learned counsel appearing for the petitioner, the learned Government Advocate and the learned senior counsel appearing for the respondents and carefully perused the entire materials available on record.

4. The petitioner on 19.09.2022 purchased the property in Survey No.



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334/2 (T.S.No.8/8) to an extent of 65 cents from one Tmt.S.Banupriya through gift deed vide Document No.13249/2022. Pursuant to the same, patta was changed in the petitioner's name and he is in peaceful possession and enjoyment of the said property. The first respondent had approved the Madakulam Detailed Development Plan No.2 under Section 29 of the Tamil Nadu Town and Country Planning Act, 1971 and numbered as Map No.3, DDP/DY.DT & CP MR.No.6/93, LPAC No.588/1990 Region C.No. 3402/93/MR.4 of third respondent. While being so, the petitioner intending to develop the land as housing plots had approached the third respondent. The third respondent informed him that there are reservations for road and park in the said land which is forming part of the Madakulam Detailed Development Plan No.2. However, the land reserved under the Detailed Development Plan No.2 had not been acquired till date by the respondents and therefore the said land remains in the petitioner's possession and enjoyment.

5. The matter in hand is no more *res integra* and this Court in another case in W.P.(MD)No.20277 of 2024, dated 23.09.2024, has already passed favourable order to the petitioner therein and the relevant portion of the same is extracted as follows:-

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



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'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.



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(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.'

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



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also enables the Government to issue notification extending the period, till date, no such notification has been issued.”

6. Fully fortified by the aforesaid order, this Court is of the considered view that the land belonging to the petitioner has not been acquired so far, within the mandatory period as required by Sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971. Such land shall be deemed to be released from such reservation. The respondents shall release the land of the petitioner, if no such notification is issued so far.

7. The Writ Petition is disposed of with the above direction. There shall be no order as to costs.

NCC : Yes / No
Index : Yes / No
jbr

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(3/3)



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TO:-

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L.VICTORIA GOWRI, J.

jbr

Order made in
W.P.(MD)No.27678 of 2024
(3/3)

Dated
20.11.2024