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W.P.No.8160 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.8160 of 2025

1.N.Mangaiyarkarasi
2.G.Natarajan

... Petitioners

Vs.

1.The Secretary,
Housing and Urban Development Department,
Fort St.George,
Chennai – 600 015.

2.The Director,
Tamil Nadu Town and Country Planning,
2,3 & 4 Floor, CMDA Office, E&C Market Road,
Koyambedu, Chennai – 600 092.

3.The Member Secretary/Deputy Director,
Coimbatore Local Planning Authority,
Door No.50, FCI Road,Gandhima Nagar,
Ganapathy, Coimbatore – 641 004.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Mandamus directing the respondents to declare that the petitioner's land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring



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about 4047.00 sq.mtrs is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the third respondent to pass an appropriate order for release of petitioner's land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs.

For Petitioners : Mr.M.R.Dhalapathy Vignesh Kumar

For Respondents 1 to 3 : Mr.M.Rajendiran,
Additional Government Pleader

ORDER

The petitioner has filed this petition seeking direction to the respondents to declare that the petitioner's land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs is deemed to be released from the reservation of Section 38 of Tamil Nadu Town and Country Planning Act, 1971 and consequently direct the third respondent to pass an appropriate order for release of petitioner's land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs.



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2. The case of the petitioners is that they are the absolute owners of the property situated in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs. It is relevant to state that road is alleged to be planned in the said area and the alleged road runs across the petitioners' land as per the DD Plan of the year 2004. Till date, no acquisition had taken place and the petitioners are in absolute possession of the same, therefore the petitioners are requesting for deletion of scheme road as per Section 38 of the Town and Country Planning Act, 1971. Hence, the petitioners have come forward with the present writ petition.

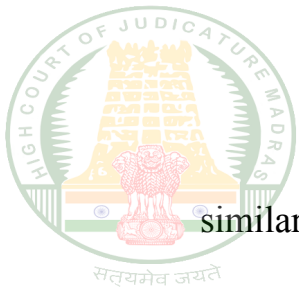
3. Learned counsel for the petitioners would submit that the aforesaid scheme prepared in the year 1990, it was stated that the said land would be acquired by the respondents as provided under the provision of Chapter IV of Town and Country Planning Act, 1971 (herein after referred to as Act). However, the Government had not taken any steps to acquire the land. It is also informed to the petitioners that the proposal to form the road has not



been given effect to or implemented. It was also informed that under Section 25 of the Act, the Town Planning authority should have obtained approval from the Government within three years from the date of the publication of the scheme but, they have not done so. Therefore, the Government after having prepared the master plan for Coimbatore Local Planning area and issued the same in the Gazette notification in G.O.Ms.No.661, Housing and Urban Development (UDIV) Department, dated 12.10.1994 has not done anything.

4. Learned counsel for the petitioners would submit that though such a notification was issued under Section 30 of the Act, no follow-up action of acquisition has been taken. Therefore, the petitioners had made representation several times to the respondents to release the lands belonging to him as the same is not acquired and no more public purpose is involved under the deemed proviso viz., under Section 38 of the Act, land would be deemed to be released from reservation, allotment or designation.

5. Learned counsel for the petitioners would then place reliance on the



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similar orders passed by this Court, which are as follows:

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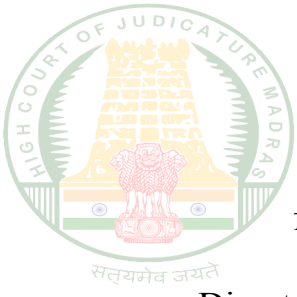
a) In the case of A.Kondasamy Vs. The Director of Town & Country Planning, Office of the Directorate of Town and Country Planning, 2nd, 3rd and 4th Floor, E & C Market Road, Koyambedu, Chennai - 600 107 and others in W.P.No.25243 of 2021 dated 29.11.2024.

b) In the case Alagirisamy Vs. The Director of Town & Country Planning, 807, Anna Salai, Chennai, Chennai District and others in W.P.No.27672 of 2022 dated 12.12.2022.

c) In the case of M/s.C.Vasanthadevi and another Vs. The Secretary, Housing and Urban Development Department, Fort St.George, Chennai - 600 015 and others in W.P.No.29069 of 2022 dated 12.12.2022.

d) In the case of V.Vijayalakshmi Vs. The Managing Director, Office of Director Municipality, Chepauk, Near Anna Square, Chennai ? 600 005 and others in W.P.No.29297 of 2022 dated 12.12.2022.

e) In the case of S.Ponnusamy and others Vs. The Director of Town & Country Planning, Office of Directorate of Town & Country Planning, Second, Third and Fourth Floors, E & C Market Road, Koyambedu, Chennai - 600 107 and others in W.P.No.30168 of 2022 dated 12.12.2022.



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f) In the case of Ramesh Chand and others Vs. The Commissioner, Directorate of Town & Country Planning, Chengalvarayan Building, 4th Floor, 807, Anna Salai, Chennai ? 600 002 and others in W.P.No.31752 of 2022 dated 12.12.2022.

g) In the case of M.Shanmugharaj Vs. The Director of Town & Country Planning, Office of Directorate of Town & Country Planning, Second, Third and Fourth Floors, E & C Market Road, Koyambedu, Chennai - 600 107 and others in W.P.No.30169 of 2022 dated 25.01.2023.

6. Heard the learned counsel on either side and perused the materials available on record.

7. The orders relied on by the learned counsel for the petitioners in the case of ***A.Kondasamy Vs. The Director of Town & Country Planning, Office of the Directorate of Town and Country Planning, 2nd, 3rd and 4th Floor, E & C Market Road, Koyambedu, Chennai - 600 107 and others in W.P.No.25243 of 2021***, which held as follows:

"5?. This Court has consistently held that if the land has not been acquired within a period of three years from the date of



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publishing the detailed development plan in the Gazette, the concerned lands shall be deemed to be released from such reservation. In the present case, the respondents had failed to take any steps to acquire the subject land therefore, by operation of Section 38 of the Act, the scheme has lapsed."

b) In the case *Alagirisamy Vs. The Director of Town & Country Planning, 807, Anna Salai, Chennai, Chennai District and others in W.P.No.27672 of 2022*, which held as follows:

"4. The main issue that has been urged before this Court is that the detailed development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamil Nadu Gazette.

5. 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 petitioner 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



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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 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.?”

6. 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 Gazette, 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

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

Section 38 of the Tamilnadu Town and Country



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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 2007. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.”

c) In the case of M/s.C.Vasanthadevi and another Vs. The Secretary, Housing and Urban Development Department, Fort St.George, Chennai – 600 015 and others in W.P.No.29069 of 2022, which held as follows:

“4. The main issue that has been urged before this Court is that the detailed development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamil Nadu Gazette.

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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.

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.?

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2. *RM.Shanmuganathan v. Director of Town and Country Planning reported in (2018) 2 CWC 20.*

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

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 2007. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.”

d) In the case of V.Vijayalakshmi Vs. The Managing Director,



Office of Director Municipality, Chepauk, Near Anna Square, Chennai –

600 005 and others in W.P.No.29297 of 2022, which held as follows:

“4. The main issue that has been urged before this Court is that the detailed development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamil Nadu Gazette.

5. 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.?*

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*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 2007. However, the respondents failed to take any steps to acquire the land and therefore, by operation of Section 38, the scheme lapsed.”

e) In the case of S.Ponnusamy and others Vs. The Director of Town & Country Planning, Office of Directorate of Town & Country Planning, Second, Third and Fourth Floors, E & C Market Road, Koyambedu, Chennai – 600 107 and others in W.P.No.30168 of 2022, which held as follows:

“4. The main issue that has been urged before this Court is that the detailed development plan has lapsed as per Section 38 of the Tamil Nadu Town and Country Planning Act, since the land has not been acquired within a period of three years from the date of publication of the notice under the Tamil Nadu Gazette.

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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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(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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f) In the case of **Ramesh Chand and others Vs. The Commissioner,**



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Directorate of Town & Country Planning, Chengalvarayan Building, 4th

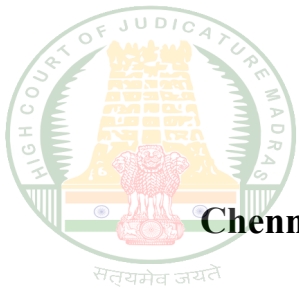
Floor, 807, Anna Salai, Chennai– 600 002 and others in W.P.No.31752 of

2022, which held as follows:

“4. Admittedly, though the scheme road was proposed to be constructed, no steps have been taken by the respondents to acquire the land as per Section 38 of the Tamil Nadu Town Country Planning Act, 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 (b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or designation.”

5. Having regard to the above section and as steps has not been taken to acquire the land within three years as per the above section, the respondent shall, without reference to the original proposal of the ring road, is directed to consider the representation of the petitioners on its own merits.”

g) In the case of M.Shanmugharaj Vs. The Director of Town & Country Planning, Office of Directorate of Town & Country Planning, Second, Third and Fourth Floors, E & C Market Road, Koyambedu,



Chennai – 600 107 and others in W.P.No.30169 of 2022, which held as

follows:

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“4. Learned counsel for the petitioner would submit that only an extent of 4.85 acres have been developed as a layout. While developing the layout, necessary lands have been gifted by gift deed bearing No.10974/2019. According to him, as far as the land already gifted in respect of a layout forming 4.85 acres, he is not claiming any right over the gifted properties. Only he seeks the declaration in respect of the remaining properties as the acquisition has not happened within a period of three years, as contemplated under Section 38 of Tamilnadu Town and Country Planning Act, 1971.

5. Learned counsel for the respondents would submit that since the lands have already been gifted, the petitioner cannot have any right over the property. The entire extent of 7.04 acres was shown in a detailed development plan No.8 of the respondents for the purpose of constructing Elementary School, High school and Play ground. Though the declaration has been made on 15.07.1992, the land has not been acquired within a period of three years.

6. It is relevant to note that Section 38 of Tamilnadu Town and Country Planning Act, 1971, 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 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



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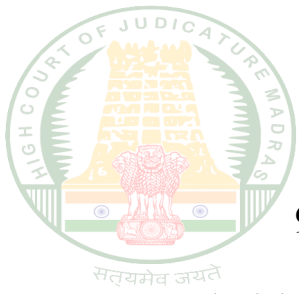
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specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice: or

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

7. 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 remaining area other than the layout already developed shall be released from the development plan. It is also made clear that in future, if the Government intends to acquire the land for any other purposes, this order will not bar for the Government in view of the provision of Land Acquisition Act. Similarly, any application is filed or pending for regularisation of unapproved layout, such application shall be dealt as per Tamilnadu Town and Country Planning Act, 1971, on its own merits, strictly in terms of the Rules.”

8. In view of the plethora of decisions of this Court as had been quoted above, the law is well settled in this regard as the issue raised in the writ petition is no more res-integra. Once the three years period is lost within the meaning of Section 37(2) proviso thereafter, Section 38 can very well be pressed in service and ultimately, the land is deemed to be released from such reservation, allotment or designation.



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9. Therefore, in view of the legal provisions as well as the categorical decisions made by this Court, this Court has no hesitation to hold that the petitioners' land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs, shall deemed to be released from such reservation or allotment or designation under Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 and consequently, the respondents are directed to pass appropriate orders in releasing the petitioner's land comprised in T.S.No.6/3 & 6/4, Block No.1, Ward No.7, Pollachi Town, Pollachi Taluk, Coimbatore District measuring about 4047.00 sq.mtrs, within a period of four weeks from the date of receipt of a copy of this order.

10. In the result, this writ petition stands allowed with the above observation and direction. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking Order : Yes/No
Neutral Citation : Yes/No

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J.SATHYA NARAYANA PRASAD,J.

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To:

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Housing and Urban Development Department,
Fort St.George,
Chennai – 600 015.
- 2.The Director,
Tamil Nadu Town and Country Planning,
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