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Review Application No.117 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 7/4/2025

C O R A M

The Hon'ble **Mrs.JUSTICE V.BHAVANI SUBBAROYAN**

Review Application No.117 of 2024

The Commissioner
Coimbatore City Municipal Corporation
Coimbatore. ...

Review Petitioner

Vs

1. K. Habbis Mohamed
2. The Joint Director of Town and Country Planning
District Town and Country Planning
Coimbatore.
3. The Member Secretary
Coimbatore Local Planning Authority
Office of Local Planning Authority
Coimbatore. ...

Respondents

PRAYER: Petition filed under Order XLVII Rule 1 r/w. Section 114 of the Code of Civil Procedure to review the order passed in W.P.No.33891 of 2023 dated 8/4/2024.



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Review Application No.117 of 2024

For petitioner

...

Mr.J.Ravindran
Additional Advocate General
assisted by
Mr.N.Umapathi

For respondents

...

Mr.P.Tamilmani
for R.1

Mr.C.Meera Arumugam
Additional Government Pleader
for R.R.2 and 3

ORDER

The present petition has been filed to review the order passed by this Court in W.P. No.33891 of 2013 dated 8/4/2024.

2. This Court, vide order dated 8/4/2024, had passed the following order:-

3. The learned counsel appearing for the petitioner has relied on a decision of this Court in W.P.(MD).No.10659 of 2012, dated 10.12.2012. The relevant portion of the order reads as follows:-



WEB COPY



Review Application No.117 of 2024

“8. In this regard, useful reference could made to a decision reported in (2008) 2 MLJ 184 (K.S.Kamakshi Chetty and others vs. Commissioner, Aruppukottai Municipality, Aruppukottai and another), wherein it has been held as follows:-

“9. On the facts and circumstances of the present case, the petitioners have clearly stated in the affidavit, that even under the old Act VII of 1920, no steps were taken for the purpose of completing the acquisition within three years and the same has not been denied in the counter affidavit filed by the first respondent. Even assuming that the said Scheme has been taken over under



WEB COPY



Review Application No.117 of 2024

the Act 35 of 1972, even from the date of coming into effect of the Act within the period stipulated under Section 38, no steps have been taken by the respondents for acquiring the property for the purpose of “open space” stated to have been reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai sanctioned under G.O.Ms.No.474 LA dated 02.03.1969.

9. Therefore, the acquisition cannot be made at this stage, since the period of three years as contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed. No costs.”

4. Following the same, this Court is of the view that the acquisition cannot be made at this stage, since the period of three years as



WEB COPY



Review Application No.117 of 2024

contemplated under the said provision is already over. Accordingly, this Writ Petition is allowed and the respondents are directed to release the land in Old Survey Nos.750/4 and 750/5, New Survey Nos.750/4B & 750/5 measuring to an extent of 25 cents, situated at Kalapatti Village, Coimbatore North Taluk, Coimbatore District, forming part of Kalapatti Detailed Development Plan No.20, by virtue of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. No costs.”

3. Heard Mr.J.Ravindran, learned Additional Advocate General for the petitioner, Mr.P.Tamilmani, learned counsel for the first respondent and Mr.C.Meera Arumugam, learned Additional Government Pleader for the respondents 2 and 3.

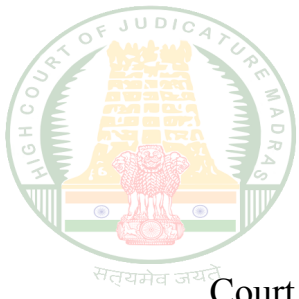
4. The learned Additional Advocate General appearing for the review



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petitioner would submit that the lands which are already earmarked for public purpose have been shown in the detailed plan as OSR lands and the same need not be acquired again, as per Section 27 of the Town and Country Planning Act. Hence, the question of acquisition of land within 3 years, as stipulated under Section 38 of the Town and Country Planning Act does not arise in the present case. Since the reserved site earmarked in the detailed development plan had already been agreed to be gifted in favour of the local body by the promoter at the time of getting approval for the residential layout in the year 1985 itself.

5. Suppressing the aforesaid facts, the writ petitioner had filed a writ of declaration seeking to declare the lands comprised in Old S.No.750/4, New Survey Nos.750/4B & 750/5 measuring an extent of 25 cents situated at Kalapatty Village, Coimbatore North Taluk, Coimbatore District earmarked for public purpose of children's play space in the Kalapattay Detailed Development Plan No.20, as if the same was not acquired as per the provisions of Section 38 of the Tamil Nadu Town and Country Planning Act.



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6. In the light of the materials, which have been placed before this Court by the learned Addl. Advocate General and upon hearing the learned counsel on either side, the review application filed by the respondents is allowed and the earlier order dated 8/4/2024 stands recalled and the writ petition is restored back to file.

7. This Court had previously passed an order allowing the writ petition on the earlier occasion, but the fact remains that the materials, which have been placed before this Court today had not been brought to its notice of this Court on the earlier occasion, which had resulted in the order being passed. Therefore, the petitioner alone cannot be mulcted with the act of suppression, but equally, it is also the respondents, who should be mulcted with the act of not acting in diligence. When public lands are involved and the respondents being the custodian of the public lands, it is the requirement of the respondents to show due diligence in dealing with the records and placing the factual aspects before this Court. However, this Court was not properly appraised of the facts, which had prompted this Court to place reliance on certain ratio laid down in cases in foresight, which, in hindsight would clearly reveal that they are not applicable to the facts of the present



case.

WEB COPY

Review Application No.117 of 2024



8. Coming to the core issue, the writ petition was to declare the lands comprised in S.Nos.750, 750/3, 750/4, 750/5 and 750/6 (part) measuring an extent of 3 acres 22 cents situated at Kalapatty Village, Coimbatore District earmarked for public purpose of children's play space in the Kalapattay Detailed Development Plan No.20, as if they were not acquired as per the provisions of the Tamil Nadu Town and Country Planning Act.

9. It is borne out by record that although the Detailed Development Plan was approved only in the year 1995, however notwithstanding the said fact, the layout has been approved in the year 1983 itself, more than a decade ago, in and by which the area which is the subject matter of the present writ petition was designated as OSR land and was gifted to the local body, viz., the Town Panchayat, vide the agreement deed dated 16.2.1985. However, it should be pointed out that at a later point of time, when the promoter did not have any right over the land, the writ petitioner had purchased the land vide sale deed dated 14.8.2023. When the site has been



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earmarked as a reserve site in the approved layout, the promoter has no right to alienate the reserve site, which land has already been earmarked as OSR land in the approved layout. Merely because the lands have not changed hands to the respondents cannot be the basis to hold that the alleged purchase made by the writ petitioner from the promoter would be valid. Once, the land having been classified as OSR land, the concerned local body is the custodian of the land and has every right to take necessary steps to evict any person from the said land, including the petitioner, who has failed to establish his valid title over the said lands.

10. The writ petitioner having not placed any material to establish his right and title over the said lands and the registered sale deed dated 14.8.2023 having been executed by the promoter, who has no right over the said land, as the land stood already alienated to the local body by way of demarcating the said land as OSR in the approved layout, which has since been approved way back in the year 1983. Consequently, any construction put up over the said land by the writ petitioner is one without any right and the respondents being the custodian of the land is entitled to evict the petitioner from the said lands, which has resulted in the communication to



the petitioner, which cannot be said to be erroneous.

WEB COPY

11. In view of the discussion made above and after considering all the materials placed before this Court and also the contentions advanced which have been adverted to in the earlier portion of the order, this Court is inclined to dismiss the writ petition as one devoid of merits and, accordingly, the writ petition stands dismissed. However, liberty is granted to the writ petitioner to establish his right and title over the property in the manner known to law, if so advised. There shall be no order as to costs.

7/4/2025

mvs.

Index: Yes/No

Neutral Citation: Yes/No



Review Application No.117 of 2024

1. The Principal Secretary to Government
State of Tamil Nadu
Fort St. George
Secretariat
Chennai 600 009.
2. The Director
Social Welfare & Nutrition Meal Department
Ezhilagam, Chepauk
Chennai 600 005.



WEB COPY



Review Application No.117 of 2024

V.BHAVANI SUBBAROYAN,J

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Review Application No.117 of 2024

7/4/2025