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Court : Chennai Madurai

Decided On : Oct-15-2015

Judge : R. Subbiah

Appeal No. : Writ Petition No. 136 of 2015 & M.P.(MD).Nos. 1 & 2 of 2015

Appellant : Sparejon Samuel

Respondent : The Director of Town and Country Planning and Another

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the second respondent in his proceedings in Na.Ka.No.270/2013/Na.Vu.Thi.Ku. Dated 14.03.2013 and the order made by the first respondent in Na.Ka.No.15202/2013/DB3 dated 11.02.2014 and quash the same as illegal and consequentially to direct the respondents to approve the plan submitted by the petitioner for effecting construction in his land in Survey No.79, Block No.1, Ward G, Nagercoil by treating the reservation made for the widening the BB Scheme Road under the Nagercoil Detailed Development Plan No.III as lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974).)

1. This is a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the second respondent in his proceedings in Na.Ka.No.270/2013/Na.Vu.Thi.Ku. Dated 14.03.2013 and the order made by the first respondent in Na.Ka.No.15202/2013/DB3 dated 11.02.2014 and quash the same as illegal and consequentially to direct the respondents to approve the plan submitted by the petitioner for effecting construction in his land in Survey No.79, Block No.1, Ward G, Nagercoil by treating the reservation made for the widening the BB Scheme Road under the Nagercoil Detailed Development Plan No.III as lapsed in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974).

2. The brief facts, which are necessary to decide the issue in this writ petition is as follows:-

2.1. The petitioner had purchased the land in question comprising in survey in S.No.79, Block No.1, Ward G, Agastheeswaram Taluk, Vadaseri Village, Nagercoil, Kanyakumari District. It was planned to construct a house in the said lands, for which, the petitioners sought approval from the respondents herein. The respondents vide their proceedings replied that the lands has been earmarked for the purpose of forming a Scheme road under the Nagercoil Detailed Development Plan No.III and thereby, refused to grant approval to the petitioner. Aggrieved over the same, the present writ petition has been filed by the petitioner.

3. The submission of the learned counsel for the petitioner is that the plan was conceived wayback in the year 2003 itself and thereafter, no steps have been taken by the respondents to acquire the land in a manner known to law. He further submitted that the land in question could be acquired either by invoking the Land Acquisition Act, within a period of three years or by way of a private negotiation with the land owners concerned, through an agreement. If the lands in question was not acquired as provided under Section 38 of the Act, on the expiry of three years notification, the land is deemed to have been released from the reservation made by the respondents. Insofar as the present case is concerned, though the notification is of the year 2003, no acquisition has been made under Section 38 of the Act.

3.1. In such circumstances, the respondents cannot deny the approval of the plan submitted by the petitioners based on the Scheme of forming Nagercoil Detailed Development Plan No.III. In support of his contention, he also relied on a judgment reported in (2008) 2 MLJ 184, K.S.Kamakshi Chetty and Others Vs. Commissioner, Aruppukottai Municipality, wherein, in respect of the very same issue, this Court has held that since the property earmarked for the purpose of scheme has not been utilised in terms of notification, and no steps have been taken by the authority to acquire the property as per Section 38 of the Act, and the properties are deemed to be released from such reservation, allotment or designation. The relevant portion of the said judgment reads as follows:-

"8. Likewise, Section 36 of Act 35 of 1972 provides for power to acquire land required or reserved or designated in the regional plan, master plan, detailed development plan or a new town development plan are deemed to be needed for a public purpose within the meaning of the Land Acquisition Act. While it is true that by advent of the new Act, the actions taken under the earlier Act are saved, even assuming that under the earlier Act, within the time limit of three years of publication of the notification under Section 14(3), no step was taken and the development plan is deemed to be a plan under the Tamil Nadu Act 35 of 1972. Section 38 of the present Act again fixes a ceiling limit of three years from the date of notice either under Section 26 or 27 for the purpose of acquiring the land, by agreement or by way of declaration and thereafter, under Section 37(2) the property is deemed to be released from such reservation. Section 38 reads as under:-

"Section 38. Release of land: If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazettee under Section 26 or 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."

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 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.

10. This has been the consistent view taken by this Court in various cases also. In W.P.No.5630 of 2000 (SV.P.N.S.S.Sivaramalingam Vs. Commissioner, Virudhunagar Municipality and another) K.P.SIVASUBRAMANIAM,J by order dated 20.02.2001, while dealing with detailed development plan under Act 35 of 1972 has held that after publishing the said plan on 23.05.1984, the property earmarked for the purpose has not been utilised in terms of Notification and no steps have been taken by the authority to acquire the property and therefore, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, the property is deemed to be released from such reservation, allotment or designation. The same view was subsequently followed by P.D.DINAKARAN,J in W.P.No.12105 of 2003 (R.Jeyapal Vs. Sattur Municipality rep.by its Commissioner, Sattur and another) in the order dated 03.03.2004".

4. The above-said order was also confirmed by the Division Bench of this Court reported in (2011) 8 MLJ 437, Commissioner , Aruppukottai Municipality Vs K.A.Kamakshi Chetty.

5. The learned Additional Govt.Pleader was put on notice on the above-said aspect.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

7. It is pertinent to point out that as per Section 37 of the Tamil Nadu Town and Country Planning Act, if the planning authority has reserved any land at the disposal of any private person to be required for any purpose under the Detailed Development Plan in respect of which notice under Section 26 or 27, the same can be acquired by the Government by invoking the provision of the Land Acquisition Act, 1894 (Central Act 1/1894). However, Section 37 provides that no such acquisition can be effected after the expiry of three years from the date of issue of notice under Section 26 or 27 in respect of such lands. If no such acquisition is provided under Section 37(2) is effected in respect of any land reserved for any purpose specified in the detailed development plan, the land is deemed to have been released from such reservation, allotment or designation. As stated earlier, the Nagercoil Detailed Development Plan No.III was notified under Section 27 and provided under Section 29 of the Tamil Nadu Town and Country Planning Act as early as 2003 and the State Government has not taken any steps to effect any acquisition as provided under Section 37 of the Act till date and as such on the expiry of three years (i.e.with effect from 2006) the land is deemed to have been released from any reservation made under the detailed development plan. Hence, the respondents are not justified in refusing planning permission for construction by the petitioner on the ground of such reservation.

8. Further, I had an occasion to deal with the similar issue in M/s.Yaseen Builders(P) Ltd Vs. The Director of Town and Country Planning, Chennai and others and the same is also reported in CDJ 2012 MHC 6500, wherealso, this Court has allowed the similar prayer made therein.

9. In view of the fact foregoing discussions, I am of the opinion that as on date, the land in question is deemed to have been released from the reservation, allotment or designation, for the reason that no acquisition was made within a period of three years from the date of notification. Therefore, the rejection made by the first respondent by referring to the scheme of Nagercoil Detailed Development Plan No.III, is not legally sustainable. Hence, the order under challenge is liable to be quashed. Accordingly, the impugned order in the writ petition is quashed. Consequently, the respondents are directed to give approval to the petitioner within a period of eight weeks from the date of receipt of a copy of this order, if it is

otherwise in order.

With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

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