

A. Raja Vs. The Director of Town and Country Planning, Chennai and Others

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Court : Chennai Madurai

Decided On : Nov-30-2016

Judge : V. Bharathidasan

Appeal No. : Writ Petition(MD) No. 15350 of 2016

Appellant : A. Raja

Respondent : The Director of Town and Country Planning, Chennai and Others

Judgement :

(Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Declaration to declare, the reservation, made in respect of the petitioner land in R.S.No.120/1C1 situated at Vandiyur I Bit Village, Vandiyur, Madurai under the Vandiyur Detail Development Plan No.4 to have lapsed by operation of section 38 of Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) in the light of the Judgment of this Court in Commissioner Aruppukottai Municipality vs. Kamakshi Shelty reported in 2011(8) MLJ 437.)

1. This writ petition has been filed seeking a Declaration that the reservation, made in respect of the petitioner land in R.S.No.120/1C1 situated at Vandiyur I Bit Village, Vandiyur, Madurai under the Vandiyur Detail Development Plan No.4 has lapsed by operation of section 38 of Tamil Nadu Town and Country Planning Act, 1971 (TN Act 35 of 1974) in the light of the Judgment of this Court in Commissioner Aruppukottai Municipality vs. Kamakshi Shelty reported in 2011(8)

MLJ 437.

2. According to the petitioner, petitioner and his brother, Mr.A.Sekar jointly purchased a property situated in R.S.No.120/1C, Vandiyur I Bit Village, Vandiyur, Madurai, for valid consideration in Document No.1338/1995, dated 28.10.1995 to an extent of 2 Acre 32 Cents. Thereafter, they sold an extent of 1 Acre and 22 Cents to one Mr.Srinivasan and the remaining land was subdivided as R.S.No.120/1C1. Subsequently, they came to know that the above survey number has been reserved for public purpose in the Vandiyur Detail Development Plan No.4. On enquiry, the petitioner came to know that the Vandiyur Detail Development Plan No.4, was prepared by the second respondent by a resolution No.11 dated 04.02.2011 and the same was also published in the District Gazette as provided under Section 19 of the Tamil Nadu Town and Country Planning Act, 1971 (Hereinafter called as Act). Thereafter, the detailed development plan came to be approved by the first respondent vide his proceedings in Roc.No.7931/2011.DP2 dated 09.03.2012 and the detailed development plan was also published in the Tamil Nadu Government Gazette under Section 31 of the Act. As per Section 37, of the Country Planning Act, if the planning authority has reserved any land which is at the disposal of any private person for any public purpose under the Detailed Development Plan, in respect of which notice under Section 26 and 27 of the Act has been issued, the same can be acquired by the State Government by invoking the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1984), and as per Section 37(2), no such acquisition shall be made after three year from the date of publication of the notice under Sections 26 and 27 of the Tamil Nadu Town and Country Planning Act, 1971.

3. According to the petitioner, so far no such acquisition proceedings has been initiated by the respondent either under Section 36 or 37 of the Act, hence all the lands shall be deemed to have been released from such reservation as per Section 38 of the Act. In such circumstances, as no acquisition proceedings has been initiated as contemplated under Section 36 and 37 of the Act, the lands are deemed to have been released as per Section 38 of the Act.

4. The second respondent filed a counter affidavit, wherein it has been stated that initially the scheme was notified under Section 19 of the Act and published in a Daily Newspaper on 31.05.1999. After preparation of Map No.2, owners meeting was conducted on 20.04.2005 and objections and suggestions were called for by the authority. Since no objection was received, Form No.9 was published in the Tamil Nade Government Gazette and in a local daily on 23.09.2007, calling for objection. But, no objection was submitted by the petitioner, despite the opportunity was given to him. The petitioner's land was reserved for public purpose for a play ground and the Local Planning Authority is only the proper authority for acquisition of any land reserved in the Detailed Development Plans and it could only be acquired by concerned executive authority. Since the reservation was for play ground which has to be taken over directly by the concerned executive authority (local body) and to be notified under Section 3 and 4 of the Park, Play Field Reservation and Regulation Act, 1959. The details of acquisition is being requested from concerned local body i.e., Madurai Corporation, vide reference dated 01.11.2016 and the second respondent can not take any acquisition proceedings pursuant to the above Vandiyur Detailed Development Plan No.4, dated 09.03.2012, since there is no development taken place in that detailed development area.

5. Heard Mr.Niranjan S.Kumar, learned counsel appearing for the petitioner and the Mr.V.Muruganantham, learned Additional Government Pleader appearing for the respondents and perused the materials available placed before this Court.

6. The learned counsel appearing for the petitioner would submit that the Government, in a notification under Section 29 of the Act, approved the detailed Development plan and the same has been published in the Government Gazette on 05.09.2012. As per Section 37 of the Act, the respondents ought to have taken proceedings for acquiring the land within a period of three years, and admittedly so far no acquisition proceedings has been initiated by the respondents under Section 36 nad 37 of the Act, hence the lands are deemed to be released from the reservation as per Section 38 of the Act. In support of his contention, the learned counsel relied on a Judgment of this Court reported in (2011)8 MLJ 437 (Commissioner Aruppukottai Municipality vs. Kamakshi Shetty) and another

Judgment reported in 2010(2) MLJ 688 (Nagamani vs. Director of Town and Planning).

7. Per contra, the learned counsel appearing for the respondents would contend that since the land has been reserved for the public purpose, namely, Vandiyur Detailed Development Plan No.4, the Local Body, namely, Madurai Corporation is the competent authority to acquire the land and so far, they have not taken any steps to acquire the land.

8. I have considered the rival submissions of both sides.

9. As rightly contended by the learned counsel for the petitioner that the notification under Section 29 of the Act, was published in the Government Gazette as early as on 05.09.2012 and the same was also published in the local daily. So far the respondents have not taken any steps to acquire the land, within a period of three years from the date of receipt of a copy of the notification.

10. In the above said circumstances, a Division Bench of this Court (2011)8 MLJ 437 (cited supra), it has been held as follows:-

18.As far as the present case is concerned, it is candidly clear that no steps were taken for completing the acquisition within three years period, which was not denied in the counter affidavit filed by the appellant/first respondent-Municipality in the writ petition. Even assuming that the said Scheme was 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 were taken by the respondents therein for acquiring the property for the purpose of open space purported to be reserved under the North-East Extension Town Planning Scheme Part II, Aruppukottai sanctioned under G.O.Ms.No.474 LA dated 2.3.1969.

19. Looking at from any angle, we are of the considered view that the property earmarked for the purpose was not utilised as per the Notification and no steps admittedly were taken by the Authority to acquire the property and therefore, as per Section 38 of the Act 35 of 1972, the property was deemed to be released from such reservation, allotment of designation.

11. In another judgment reported in (2011)8 MLJ 441 (cited supra), it has been held as follows:-

11.the learned counsel appearing for the petitioners submitted that admittedly, initial notice was made in the year 1991 and no action has been taken within three years, the Government has to release the land from the acquisition as per the Section 38 of the Act. Mr.M.Ajmal Khan, the learned counsel appearing for the petitioners also relied upon two judgments (2008)2 MLJ 184 and (2008)8 MLJ 994 in support of his contention. In the reported Judgment rendered in (2008)2 MLJ 994 the learned Judge after considering the various provisions of the Tamil Nadu Town and Country Planning Act, 1971, set aside the impugned order, by invoking the provisions of 38 of the Tamil Nadu Town and Country Planning Act. In that Judgment, the learned Judge has held in para 26 as follows:-

Considering Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 which deems the release of property in the event of not acquiring within the stipulated time of three years as per proviso to Section 37(2), based on the overall scheme and object of the Act and also on the factual circumstances, when the authority, viz., the Trichy Corporation has categorically decided that due to want of funds, there is no proposal to acquire the same, there is no difficulty to come to the conclusion that the deed provisions comes into effect automatically.

12. In view of the above, settled position of law, as admittedly no acquisition proceedings has been initiated within a period of three years from the date of notification under Section 27 of the Act, as per the provisions of Section 38 of the Act, the lands are deemed to be released from the reservation.

13. In the result, this writ petition is allowed. No costs.

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