

(2009) 09 MAD CK 0191

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 5221 of 2009

V. Nagamani and Mrs. Soundra
Devi

APPELLANT

Vs

The Director of Town and
Country Planning, The
Commissioner, Madurai
Corporation and The Member
Secretary, the Madurai Local
Planning Authority

RESPONDENT

Date of Decision: Sept. 8, 2009

Acts Referred:

- Tamil Nadu Town and Country Planning Act, 1971 - Section 26, 27, 27(2), 28, 36

Citation: (2010) 2 CTC 510 : (2010) 2 MLJ 688 : (2010) WritLR 96

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: M. Ajmal Khan, for the Appellant; Pala Ramasamy, Special Government Pleader for Respondents 1 and 3 and M. Suresh Kumar, for 2nd respondent, for the Respondent

Final Decision: Allowed

Judgement

R.S. Ramanathan, J.

Heard both sides.

2. The petitioners are the owners of the land ad-measuring, an extent of 0.41 acres comprised in Survey No. R.S. No. 66/5A2B, 66/5A2A & 66/4, Bye-Pass Road, Madurai, and they wanted to construct a building in that land. The petitioners submitted a plan for the construction of a hospital building, the 2nd respondent without approving the plan submitted by the petitioners returned the same on 02.06.2009 on the ground that lands for which the approval is sought for comes within the ambit Ponmeni DD Plan No. III AA Scheme Road and the same has not been removed by the Town & Country Plan Authority and therefore, approval cannot be

granted.

3. It is submitted by the learned Counsel appearing for the petitioners that the first respondent conceived a plan for the Ponmeni Part-III Extension Development Scheme, under which 100 Feet AA Scheme Road was also proposed and the Local Planning Authority passed the Resolution No. 962, dated 27.09.1990 and the same was notified in the District Gazette on 10.01.1991 and the notification was also published in the "Dina Thanthi" Daily, dated 15.01.1991.

4. According to the learned Counsel appearing for the petitioners though the notification was published in the District Gazette in the year 1991, the respondents have not taken any action, to purchase or acquire the land, for the purpose of the scheme road in accordance with Section 27(i) of the Tamil Nadu Town & Country Planning Act, 1971.

5. It is further submitted by the learned Counsel appearing for the petitioners that after the publication in the District Gazette and the local newspaper, the Authority must invite objections and suggestions, in writing, from any person in respect of the said plan, within the period specified in the notice and after the expiry of the period given in that notification, the Local Planning Authority shall allow a reasonable opportunity of being heard to any person and shall submit the plan with or without modification to the Government as per the Section 26 of the said Act. Thereafter the Government may approve the plan with such modification has deemed it as per Section 28 of the Act.

6. Further the entire process of acquisition shall be completed within a period of three years and if no declaration u/s 27(2) was not made within a period of three years for the purpose of acquisition of the land, the Government shall release the land. Hence, it was argued by the learned Counsel appearing for the petitioners that from 1991, nothing has been done by the respondents either to acquire the land or to pass any declaration and on the other hand, when the petitioners submitted a plan, the 2nd respondent passed the impugned order by the proceedings, dated 05.06.2009 rejecting the approval of the plan on the ground that 100 Feet AA Scheme Road in Ponmeni Part-III Extension Development Scheme is not removed in the sketch by the Town Planning Authority and the land comes within the road area and therefore, no approval can be granted for the construction of the building in the place ear-marked as 100 feet AA Scheme Road. The said order is challenged in this writ petition.

7. Mr. Pala Ramasamy, the learned Special Government Pleader appearing for the respondents 1 and 3 filed a detailed counter affidavit and submitted that the petitioners' property situate in R.S. No. 66/4pt, 5A2A, 5A2Bpt is lying in the approved Ponmeni Detailed Development Plan No. III in which, it is proposed a 100 feet "AA Road" and during the preparation of the D.D.plan, the petitioners never gave any objection or suggestion to the notifications and as the acquisition process

involves huge fund, the Local Planning Authority was not in a position to acquire the land immediately and as and when the land owners in the concerned area seeks for approval for their lands, the required portion of land in the proposed scheme road would be acquired by way of gift deed and the proposed road would be formed gradually.

8. It is further stated in that counter affidavit that the total area of the proposed road that comes through the petitioners land is 19120 sq. ft or 1776.24 sq. meter. It is further stated in the counter affidavit that expiry of three years as provided u/s 38 of the Town and Country Planning Act 1971, will not arise as there is no agreement entered into between the respondents and the petitioners till date.

9. Per contra, Mr. M. Ajmal Khan, the learned Counsel appearing for the petitioners submitted that after the approval given by the Government for the plan, the same shall be published by the Government, in the Tamil Nadu Gazette and in the leading vernacular daily newspaper of that region and after the publication in the Tamil Nadu Gazette, the publication comes into operation and the notification in the Government Gazette as per Section 36 of the Act.

10. As per Section 36 of the Act, any land required or reserved or designated in the regional plan, master plan, detailed development plan or a new town development plan, shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act and may be acquired under the said Act and it is further provided u/s 37(2) of the Act no such declaration in respect of the lands covered under Sections 26 and 27 of the Act, shall be made after the expiry of three years from the date of notification and as per Section 38, if within three years from the date of publication of the notice in the Tamil Nadu Government Gazette u/s 26 or 27 no declaration as per Section 37(2) shall be published in respect of any land reserved of any land reserved, allotted or designated for any purpose, such land shall be deemed to be released from such reservation, allotment or designation"

11. Mr. M. Ajmal Khan, the learned Counsel appearing for the petitioners submitted that admittedly, initial notice was made in the year 1991 and as 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 reported in 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 deemed provisions comes into effect automatically.

Therefore, having regard to the fact that no steps have been taken by the respondents as provided in that Act, either to acquire the land or make publication within three years from the date of initial notification. As per the deeming provision of Section 38, the lands are deemed to have been released from the acquisition and hence, the respondent cannot reject the approval on the ground that the land has been included in the 100 Feet AA Road Scheme.

12. In the result, the order of the 2nd respondent is set aside and the petition is allowed. No costs.