

**(2011) 08 MAD CK 0340**

**Madras High Court**

**Case No:** W.A. No. 1773 of 2009 and M.P. No. 1 of 2009

The Commissioner, Aruppukottai  
Municipality

APPELLANT

K.S. Kamakshi Chetty and Others

Vs

RESPONDENT

**Date of Decision:** Aug. 25, 2011

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Tamil Nadu Town and Country Planning Act, 1971 - Section 38
- Tamil Nadu Town Planning Act, 1920 - Section 14(3), 25(2), 6
- Town and Country Planning Act, 1972 - Section 26, 27, 34, 35, 36

**Hon'ble Judges:** M. Venugopal, J; Elipe Dharma Rao, J

**Bench:** Division Bench

**Advocate:** S. Sivakumar, for the Appellant; S. Anand, for R1 to R3 and R6 to R8 and M.E. Rani Selvam, Addl. Govt. Pleader, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

M. Venugopal, J.

The Appellant/Municipality has preferred the present writ appeal as against the order dated 5.2.2008 in W.P. No. 27123 of 2003 passed by the learned single Judge.

2. The Learned single Judge, while passing the order in W.P. No. 27123 of 2003 dated 5.2.2008, among other things, observed that the Respondents had clearly stated in the affidavit, "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(appellant). 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 u/s 38, no steps have been taken by the Respondents therein 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 2.3.1969" and resultantly allowed the writ petition.

3. Feeling aggrieved against the order passed by the learned single Judge dated 5.2.2008 in W.P. No. 27123 of 2003, the Municipality has preferred the instant writ appeal before this Court.

4. The Learned Counsel appearing for the Appellant/Municipality submitted that the order of the learned single Judge was contrary to the established principles of law and further, land in question was ear marked for the purpose of public utilization and it was declared as "Open Space" vide G.O.Ms. No. 434 LA dated 2.3.1969 u/s 14(3) of Madras Town Planning Act VII of 1920 and as such the land was allotted to the Municipality. But, these material facts were not taken note of by the learned single Judge while allowing the writ petition, which resulted in a serious miscarriage of justice.

5. The Learned Counsel for the Appellant/Municipality came forward with a plea that the Learned single Judge had failed to appreciate the fact that the original Land owner Thiru.Thankkaya Nadar, instead of handing over the property in dispute to the Municipality, sold the same to the Respondents 1 to 4 herein and therefore, the sale was invalid one and not binding on the Municipality.

6. The Learned Counsel for the Appellant urges before this Court that the learned single Judge had committed an error in holding that the property ear-marked for the purpose has not been utilized as per the Notification and no steps have been taken by the Authority to acquire the property and as such, as per Section 38 of the Tamil Nadu Town and Country Planning Act, 1971, (Act 35 of 1972) (hereinafter referred to as "Act 35 of 1972), the property is deemed to be released from such reservation and the said finding was clearly arbitrary and illegal one in the eye of law.

7. It is to be noted that the Petitioners in the writ petition/Respondents 1 to 4 were stated to be the joint owners of the property situated in old survey No. 589 (Part), present T.S. No. 132 of Ward D, Block No. 30 of Aruppukottai Town. The first and second Respondents/Petitioners had obtained their undivided one third share each under the sale deed dated 27.10.1980 and 16.2.1983 respectively. The third and fourth Respondents got the remaining undivided one third share each by succession.

8. According to the Respondents, the said lands together with other adjacent lands were covered North-East Extension Town Planning Scheme Part II, Aruppukottai, sanctioned in G.O.Ms. No. 434 LA dated 2.3.1969 u/s 14(3) of the Madras Town Planning Act, 1920 (Madras Act VII of 1920 - in short referred to as "Act VII of 1920") and published as per the said provisions of the Act.

9. As per the Act, the immovable property required for the scheme could be acquired under the Land Acquisition Act, 1894 (in short "the Act") and any Notification issued u/s 14 of the Act VII of 1920, is deemed to be a declaration given u/s 6 of the Act. As per the Act VII of 1920, if within three years from the Notification u/s 14, the lands are not acquired, the same shall cease to have the effect of declaration under the Act and it is deemed to be no acquisition at all. In short, according to the Respondents 1 to 4/petitioners, no acquisition proceedings were taken after the Notification issued u/s 14(3) dated 2.3.1969.

10. It is to be borne in mind that the Act, VII of 1920 was replaced by the Act 35 of 1972, which enjoins that any action taken under the previous Act deemed to be the action taken under the new Act. As such, the Notification mentioned in Town Planning Scheme u/s 14(3) of Act VII of 1920 dated 2.3.1969 was equivalent to the notification of the detailed development Plan u/s 27 of the Act 35 of 1972. The new Act also contemplates a provision for acquisition akin to the notification of the detailed development Plan u/s 27 of the Act 35 of 1972 and also it has a clause that after expiry of three years, the same would have no effect. Even after coming into force of the new Act, no endeavour was taken and therefore, there was no declaration of acquisition existing in respect of the aforesaid land. In short, the contention of the Respondents/petitioners was to the effect that the Notification dated 2.3.1969 issued under the Act VII of 1920 is deemed to have not been in existence and viewed in that perspective, the purchase and inheritance made by the Respondents/petitioners are perfectly valid one in the eye of law and they are deemed to be the owners and also that they are in joint possession of the property. The portions ear-marked as "open space" under the old Scheme has come to an end. The Respondents initially decided to develop the said land and jointly applied to the fifth Respondent on 1.3.1999 through the Appellant/first Respondent for change of using the land covered by the said Town Planning Scheme.

11. It is not in dispute that the Appellant/first Respondent, by virtue of order dated 9.1.2003, rejected the application of the Respondents 1 to 4/writPetitioners and hence, they filed W.P. No. 23214 of 2003 for Mandamus, directing the Respondents therein to cancel or revoke the reservation of the lands for "open space", which was subsequently dismissed as withdrawn on 21.8.2003 by this Court by giving liberty to the Petitioners therein to file a fresh writ petition. Challenging the order of the Appellant/first Respondent-Municipality dated 9.1.2003, the Respondents 1 to 4/writPetitioners had projected W.P. No. 27123 of 2003 before this Court.

12. According to the Appellant/First Respondent, the Municipal Town Planning Authority have no right to alter the approved scheme. It was the case of the Appellant also that while obtaining lay-out approval with regard to the disputed land in 1973 as per T.P./DTP No. 98/73, the disputed land was reserved as "Open space" for public purpose. According to the Appellant/first Respondent, when once it is reserved for public utility under the Town and Country Planning Act, the previous

owner has no right to alter the physical features of the land. Section 34 of the Act 35 of 1972 reads as follows:

Section 34. Detailed town planning schemes prepared under the Tamil Nadu Town Planning Act, 1920 deemed to be detailed development plans under this Act. -Every detailed town planning scheme notified, submitted or sanctioned under the Tamil Nadu town Planning Act, 1920 (Tamil Nadu Act VII of 1920) together with any variation made thereto shall, for purposes of this Act, be deemed to be a detailed development plan made under the Act and all the actions taken under the said Act in respect thereof shall be deemed to have been taken under this Act.

13. That apart, Section 27 of the Act 35 of 1972 enjoins issuance of notice for preparation of detailed development plan, which was corresponding to Section 14(3) of the Act VII of 1920. For better appreciation of the matter, the ingredients of the said Section are mentioned here under:

27. Notice of the preparation of the detailed development plant - (1) As soon as may be, after the local planning authority has received the consent of the Director under Sub-section (2) of Section 25 to the publication of the notice, the local planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the detailed development plan and the place or places where copies of the same may be inspected, inviting objections and suggestions, in writing, from any person in respect of the said plan within such period as may be specified in the notice

Provided that such period shall not be less than two months from the date of the publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in Sub-section (1), the local planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the detailed development plan as it considers proper and shall submit the said plan with or without modifications to the Director.

14. Section 36 of Act 35 of 1972 provides for power to acquire the land required or reserved or designated in the regional plan, master plan, detailed development plan or a new town development plan, which are deemed to be noted for the public purpose within the meaning of the Act. Admittedly, no step was taken and the development plan was deemed to be a plan under the Act 35 of 1972. Section 38 of the present Act again fixes a ceiling limit of three years from the date of notice, either u/s 26 or 27 for the purpose of acquiring the land, by agreement or by way of declaration and thereafter, u/s 37(2), the property is deemed to be released from such reservation.

15. Section 38 of the Act 35 of 1972 speaks of release of fund and the same is extracted here under-

Section 38. Release of land - If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette u/s 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.

16. We recall the decision of this Court reported in the case of K.S. Kamakshi Chetty, P. Ponnappan, P. Dharmarajan and P. Shivakumar Vs. The Commissioner, Aruppukottai Municipality and The Director, Town and Country Planning, wherein it is held as follows:

When there was no acquisition proceeding taken within three years after the Notification issued u/s 14(3) of the old Act 7 of 1920 and even after the new Act of 1971 has come into effect, no step has been taken within the stipulated period for acquiring the property for the purpose of "open space" stated to have been reserved under the said Scheme, in view of Section 38 of the Act of 1971, the property would be deemed to be released from such reservation.

17. We also pertinently point out the decision of this Court reported in the case of Casa Grande Private Limited Vs. Chennai Metropolitan Development Authority (CMDA), wherein it is held as follows:

I. While granting planning permission, the concerned Authority may impose certain conditions, however, any condition imposed shall be in compliance of relevant Act or Rules and in the absence of power, such condition cannot be imposed by the Authority in exercise of its executive power.

II. The State can prepare development plan covering the private lands, but no development can be made on that land unless the private land is acquired for development, even for providing amenities to the residents of the area.

III. The rule of alternative remedy cannot be said to be of universal application and High Court under Article 226 of Constitution, can exercise its inherent powers in cases where the authorities passed the order in the absence or excess of jurisdiction.

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/firstRespondent-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 u/s 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 ear-marked 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 or designation.

20. Viewed in that perspective, we hold that the order of the learned single Judge in allowing the writ petition in W.P. No. 27123 of 2003 does not suffer from any serious material irregularity or patent illegality. Resultantly the writ Appeal fails.

21. In the result, the writ appeal is dismissed, leaving the parties to bear their own costs. Consequently the order of the Learned single Judge in W.P. No. 27123 of 2003 dated 5.2.2008 is affirmed for the reasons assigned in this writ appeal. Consequently, connected M.P. is also dismissed.