

(2002) 06 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No's. 359 and 360 of 1996

Aruppukkottai Nadars Uravinmurai Podhu Abiviruthi Trust

APPELLANT

Vs

The Commissioner Aruppukkottai Municipality Aruppukkottai
and The Director of Town and Country Planning, Madras

RESPONDENT

Date of Decision : 07-06-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Tamil Nadu Town and Country Planning Act, 1971 — Section 26, 27, 37, 37(2), 37(3)

Citation : (2002) 06 MAD CK 0055

Hon'ble Judges : V.S. Sirpurkar, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; T. Kokilavani, Spl. Govt. Pleader, for the Respondent

Judgement

V.S. Sirpurkar, J.—This judgment shall dispose of two writ petitions namely W.P.No.359 of 1996 and W.P.No.360 of 1996. The first writ

petition is for a writ of certiorarified mandamus calling upon the quashing of the order passed by the first respondent, Commissioner,

Aruppukkottai Municipality dated 7.11.1995. By that order, the permission to construct over T.S.Nos.28,29,42 and 43 was rejected on the

ground that those lands were part of the scheme and in the scheme a road was said to be passing from those lands.

2. The second Writ Petition No. 360 of 1996 is well connected with the first writ petition inasmuch as the relief asked for is quashing of the order

Vide Na.Ka.No.46451/94, DP 1(1) dated 16.8.1995, passed by the second respondent, Director of Town and Country Planning. By that order,

concerned officer had refused to delete these above mentioned lands from the scheme. It therefore follows that the petitioner, who wanted to

develop the lands and construct something over them, required the permission of Aruppukkottai Municipality. However, since these lands were the

part of the scheme under the Tamil Nadu Town and Country Planning Act, 1971, the Municipality refused the permission to construct and,

therefore, the petitioner approached the Town Planning authorities to get these lands deleted from the scheme, so that the hurdle of the scheme

was removed from his way for making constructions on those lands. Following factual background will help us understand the controversy.

3. It is an admitted position that the petitioner holds pattas in respect of the lands in question. Though in 1961 the Municipality opposed to grant

pattas, the petitioner was granted the pattas in the year 1962 and those pattas were granted by the settlement officer under Act 26 of 1948.

Thereafter, in 1971, the Director, Town and Country Planning sanctioned a plan by way of a scheme, wherein T.S.Nos.28,29,42 and 43 were

shown to be required for public roads. However, it is an admitted position that in pursuance of the scheme this land was never acquired either by

the Municipality or by the Government. The petitioner applied for permission to construct, which application was granted. The petitioner also

received a letter dated 15.11.1994 to pay a sum of Rs.2,500/- towards plan variation fee. However, subsequently this permission came to be

revoked by order dated 16.8.1995 Vide Na.Ka.No.46451/94, DP 1(1). The petitioner, therefore, again filed an application for permission to put

up construction. On the other side, the petitioner also applied for deletion of the lands from the scheme. So, while the application before the

Municipal Council was pending, the second respondent i.e., the Director, Town and Country Planning rejected the application for deletion of these

lands from the scheme. Consequently, the application for construction made to the Municipality was also rejected vide order dated 7.11.1995.

That was rejected on two grounds, firstly that the constructions were not in keeping with the building rules as the petitioner had not left open space

as per Rule 14(1) and secondly that the lands were included in the scheme. It is against all this that the present two writ petitions came to be filed

as stated above.

4. The learned counsel for the petitioner Mr.Sundar has restricted his arguments mainly to Sections 37 and 38 of the Tamil Nadu Town and

Country Planning Act (hereinafter referred to as "the Act"). The learned counsel points out that there can be no doubt that this was a privately owned land. He points out that the land is well covered by patta, which stands in the name of the petitioner. He then points out that for implementing the scheme, it was necessary for the authorities to acquire the land u/s 37. He points out that nothing of the sort was done u/s 37 either by the Municipality or by the Government after the publication of the development plan. He then invites the attention to Section 38, which is to the following effect:

Section 38:- If within three years from the date of the publication of the notice of Section 27 in the Tamil Nadu Government Gazette -

(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 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.

5. Very heavily relying on Section 38, the learned Counsel pointed out that since there was no declaration made in respect of any land covered by

a notice u/s 26 or 27, within three years from the date of such notice as contemplated u/s 37(2) and since the land was also not acquired by private

agreement, the land is deemed to be released from the reservation, allotment or designation. The learned counsel points out that notices under

Sections 26 and 27 were published somewhere in the year 1971. That position is not disputed by the Government Pleader. He points out that

since no effective steps were taken u/s 37 and since the land just remained as it was, the necessary consequences of Section 38 must follow. Now,

there can be no doubt that after the publication of the notices u/s 26 and 27, there arises a power to purchase or acquire the land specified in the

development plan in favour of the planning authority. In this case, the said planning authority would be the Municipality. Section 37(2) specifically

provides that where the land concerned is required as per the development plan for the public purpose, an application shall be made suggesting

therein that the land is required for public purpose. On that, a declaration in the nature of Section 6 of the Land Acquisition Act is published and

the time limit for making such declaration is three years. It is also clear from Section 37(3) that after the publication of the declaration, the

acquisition proceedings are taken by the Collector and the land is finally acquired. Section 38 is extremely clear that where no declaration u/s 37 is

made in respect of any land reserved for the development plan for three years or where the land is not acquired by the private agreement, the land

is deemed to be released. Therefore, the learned counsel is right in his contention that the land is deemed to have released and to that extent the

order refusing to delete the lands from the scheme, passed by the second respondent is clearly incorrect.

6. If this is so, then that objection by the Municipal Council for refusing to grant the permission to construct would obviously not stand and the

order refusing the permission to that extent is clearly incorrect. When we see the order passed by the Municipality refusing permission, it is seen

that it is passed on two grounds and the second ground is that the land is a part of the scheme. However, there is one more difficulty in the way of

the petitioner by way of the first ground, wherein the Municipal Council says that the plan is not in keeping with the rules. Ordinarily, there would

be no question of interfering with the Municipal Council's order insofar as the first ground is concerned. That will be upto the Municipality to

consider and it will be up to the petitioner to remedy the defects shown by way of the first ground. Till such time as the petitioner is not able to

remedy the defects shown in the first ground, there would be no question of issuing the permission. Therefore, though the order is incorrect insofar

as the second ground is concerned, that does not solve the difficulty of the petitioner. However, the petitioner may still approach the Municipal

Council with a fresh application for permission, if necessary, by remedying the defects. However, it is obvious that the lands stand released from

the scheme by the operation of Section 38.

7. The learned Government Pleader says that if the land is permitted to be utilised by raising constructions thereupon, the public will suffer

immensely. In fact, the administrator of the Municipal Council was also present during the debate before this Court and he also reiterated that the

Municipal Council has passed a resolution to acquire this land. That may be so. The Municipality cannot be allowed to wait for years together to

acquire the land if they really require the land for public purpose. The Government Pleader says that there are plans to acquire this land and the

Government would be taking steps to acquire the land under Land Acquisition Act. They are at liberty to do so, but that too cannot wait

indefinitely for years together as has happened in this case.

8. Therefore, the writ petitions are disposed of by declaring that the order passed by the Municipal Council rejecting the permission is incorrect

insofar as the second ground is concerned. As also, the order passed by the second respondent, Director, Town and Country Planning is incorrect

deleting the scheme. With the result, the lands automatically stand released from the scheme and the petitioner would be in a position to apply

afresh for the permission by remedying the defects shown in the first order of the Municipality. If the application for permission to construct is made

by the petitioner, such application shall be dealt with within six months thereof as per the Rules. The Government as well as the Municipal Council

are also at liberty to start the proceedings for acquisition on these lands. While considering the application for permission to construct, the

Municipal Council shall take into account any such acquisition proceedings if then pending.

9. With these observations, the writ petitions are disposed of.