

(2008) 02 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 27123 of 2003

K.S. Kamakshi Chetty, P. Ponnappan, P. Dharmarajan and P. Shivakumar

APPELLANT

Vs

The Commissioner, Aruppukottai Municipality and The Director, Town and Country Planning

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Tamil Nadu Town and Country Planning Act, 1971 — Section 125, 25(2), 26, 27, 27(1)

Tamil Nadu Town Planning Act, 1920 — Section 14, 14(3)

Citation : (2008) 2 MLJ 184 : (2008) WritLR 264

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : N.S. Manoharan, for the Appellant; V. Subbarayan, for R. 1 and D. Geetha, AGP for R. 2, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition is filed challenging the order of the first respondent dated 09.01.2003, by which the representation of the petitioners to allot the "open space", came to be rejected with direction to take steps to execute gift deed in favour of the Municipality from the owners.

2. The petitioners are stated to be the joint owners of the property comprised in Old Survey No. 589 (Part), present T.S. No. 132 of Ward D,

Block No. 30 of Aruppukottai Town. The first and second petitioners have obtained their undivided 1/3rd share each under the sale deed dated

27.18.1980 and 16.02.1983 respectively and the third and fourth respondents got the remaining undivided one third share each by succession. As

stated by the petitioners, the said lands along with the other adjacent lands were covered by North-East Extension Town Planning Scheme Part II,

Aruppukottai, sanctioned in G.O.Ms.No.434 LA dated 02.03.1969 u/s 14(3) of the Madras Town Planning Act, 1920 (Madras Act VII of 1920

- in short referred to as ""Act VII of 1928"")) and published as per the said provisions of the Act.

2(a). As per the said Act, immovable property required for the Scheme can be acquired under the Land Acquisition Act, 1894 (in short, ""the Act"")

and any Notification issued u/s 14 of Act VII of 1920, is deemed to be a declaration given u/s 6 of the Act. According to the petitioners, as per

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 Land Acquisition Act and it is deemed to be no acquisition. According to the petitioners there was no acquisition proceedings taken after

the Notification issued u/s 14(3) dated 02.03.1969.

2(b). The Tamil Nadu Town and Country Planning Act, 1971, which has replaced the Madras Town Planning Act, 1920 specifically states that any

action taken under the previous Act are deemed to be the action taken under the new Act. Therefore, as stated by the petitioners, the Notification

detailed in Town Planning Scheme u/s 14(3) of Act VII of 1920 dated 02.03.1969 is equivalent to the Notification of the Detailed Development

Plan u/s 27 of the Tamil Nadu Town and Country Planning Act, 1971. The new Act also contain a provision for acquisition similar to Section 6 of

the Land Acquisition Act and also contain a clause that after expiry of three years, the same will have no effect.

2(c). According to the petitioners, even after the new Act has come into effect, no step has been taken, therefore, there is no declaration of

acquisition subsisting in respect of the above said land. Therefore, according to the petitioners, the Notification issued under Act VII of 1920 dated

02.03.1969, is deemed to have not been in existence, and therefore, the purchase and inheritance made by the petitioners are legally valid and they

are deemed to be the owners and according to the petitioners they are in joint possession of the property. In view of the same, the portions ear-

marked as ""open space"" under the old Scheme has come to an end. The petitioners wanted to develop the said land and hence they jointly applied

to the second respondent on 01.03.1999, through the first respondent for change of use of the land covered by the said Town Planning Scheme.

2(d). By the impugned order dated 09.01.2003, the first respondent has rejected the application of the petitioners, the petitioners have filed W.P.

No. 23214 of 20123 for Mandamus directing the respondents to cancel or revoke the reservation of the lands for ""open space"", which was

subsequently dismissed as withdrawn on 21.08.2063 by an order of this Court, giving liberty to the petitioners to file fresh writ petition challenging

the order of the first respondent dated 09.01.2003. Accordingly, the present writ petition is filed.

2(e). According to the petitioners, similar reliefs have been granted by this Court in other cases, viz., W.P. No. 5630 of 2000 dated 20.02.2001

and W.P. No. 10808 of 2001 dated 07.09.2001.

3. The first respondent has filed counter affidavit. According to the first respondent, an extent of 0.75 acres comprised in S.No. 132 belonged to

one Thankayya Nadar, who formed a lay out in respect of larger extent of property, and submitted before the second respondent and the said

extent was ear-marked as ""open space"", allotting the same to the Municipality for public purposes. The said Thankayya Nadar, having shown the

same as ""open space"" failed to gift the said portion to the Municipality and the Municipality has also failed to make arrangements to acquire the

open space"" allotted to it for public purpose.

3(a). It is the case of the first respondent that the said Thankkaya Nadar instead of handing over the property to the Municipality, sold the property

and the sale is invalid and not binding on the respondents. It is also denied that the petitioners are the joint owners. It is admitted that the property

which is in dispute is covered by North-East Extension Town Planning Scheme Part II sanctioned by G.O.Ms. No. 434 LA dated 02.03.1969 u/s

14{3) of Act VII of 1920. According to the first respondent, when once the place is ear-marked for public utilisation, nobody will have any right

over the same.

3(b). According to the first respondent, the Municipal Town Planning authority have no right to alter the approved Scheme. It is also the case of

the first respondent that while getting lay-out approval in respect of the disputed land in 1973 as per T.P./DTP. No. 98/73, the disputed land was

reserved as "open space" for public purpose and. according to the 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.

4. As it is admitted in the counter affidavit filed by the respondents and also the case of the petitioners, the property which is a subject matter of this writ petition formed part of North-East Extension Town Planning Scheme Part II sanctioned on 02.83.1963 u/s 14(3) of Act VII of 1920. The above Scheme was notified by the Government under the said Section in G.O.Ms. No. 434 L.A. Dated 02.03.1969. It is not disputed by the respondents in the counter affidavit that after the publication of the said Scheme, no further action was taken by the respondents for the purpose of taking possession of the said land ear-marked as "open space" in a legal manner. Merely because in an approval of lay-out subsequently in 1973 the present property was shown as for public purpose, cannot amount to taking possession of the property which can only be by way of gift from the erstwhile owner.

5. It is true that the Tamil Nadu Town and Country Planning Act, 1971 has repealed the said Madras Town Planning Act, 1920 (Madras Act VII of 1920), however stating that any action taken under the previous Act under the corresponding provisions of the new Act shall continue to be in force unless and until superseded by or anything done under the new Act. Section 125 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) states as follows:

125. Repeal and saving.- (1) The Tamil Nadu Town Planning Act, 1920 (Tamil Nadu Act VII of 1920) (hereinafter referred to as the said Act) is hereby repealed.

(2) Notwithstanding such repeal-

(a) anything done or any action taken including any appointment or delegation made, notification, order, instruction or direction issued, rule, regulation or scheme framed, certificate, permit or licence granted or registration effected under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue in force accordingly, unless and until superseded by anything done or any action taken under this Act; and

(b) the betterment fee in respect of any land which any local authority was, immediately before the commencement of this Act, entitled to levy,

assess and recover under the said Act, may be levied, assessed and recovered by the local planning authority concerned under the said Act as if

this Act had not been passed.

6. Under the Tamil Nadu Act 35 of 1972, Section 34 deems every detailed town planning schemes prepared under the Tamil Nadu Town

Planning Act, 1920, to be detailed development plans under this Act. The said provision is 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, 1928 (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 actions taken under the said Act in respect thereof shall be deemed to have been taken under this Act.

7. Section 27 of Tamil Nadu Act 35 of 1972 provides for issuance of notice for preparation of detailed development plan, which was equivalent to

Section 14(3) of Act VII of 1920. The said Section reads as under:

27. Notice of the preparation of the detailed development plan.- (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.

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 u/s 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 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. 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 Gazette u/s 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 u/s 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 v. The

Commissioner, Virudhunagar Municipality and Anr. 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 ear-marked 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 v. Sattur Municipality rep. by its

Commissioner, Sattur and Anr. in the order dated 03.03.2004.

In view of the above said factual situation, the writ petition stands allowed and the impugned order of the first respondent is set aside. No costs.