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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.1481 of 2023

and

W.M.P.(MD)Nos.1354 and 1355 of 2023

K.Pattulakshmi

Chairperson,

Special Grade Town Panchayat,

Sankar Nagar, Tirunelveli, Tirunelveli District.

... Petitioner

vs.

1.The Director of Town Panchayat,
Urban Administrative Office Complex,
7th and 8th Floor,
No.75, Santhome Highway,
Raja Annamalaipuram, Chennai- 28.

2.The District Collector,
Tirunelveli, Tirunelveli District.

3.The Assistant Director,
Town Panchayat,
N.G.O.Colony, RTO Office Back side,
Palayamkottai,
Tirunelveli, Tirunelveli District.



4. The Sankar Nagar,
Special Grade Town Panchayat,
represented by its Executive Officer,
Sankar Nagar Tirunelveli,
Tirunelveli District.

5. B. Radhasankar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari and Mandamus, to call for the records pertaining to the impugned order passed by the second respondent in Na.Ka.No.3961/2023/P3, dated 01.12.2022 and to quash the same consequently, to direct the second respondent to re-assess the land in S.Nos.437/1, 438/1 and 439/1 of Narayannammal Village, Tirunelveli District by considering the petitioner's representation, dated 13.01.2023.

For Petitioner : Mr. G. Prabhu Rajadurai
for Mr. R. Kannappan

For R1 to R3 : Mr. Veerakathiravan
Additional Advocate General
assisted by Mr. N. Muthu Vijayan
Special Government Pleader

R4 : No appearance

For R5 : Mr. T. Mohan
Senior Counsel
for Ms. D. Geetha



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ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking interference with an order of the second respondent/District Collector, Tirunelveli, dated 01.12.2022 in Na.Ka.No.3961/2020/P3 and consequently, to direct the said Collector to re-assess the land in S.Nos.437/1, 438/1 and 439/1 at Narayanammal Village, Tirunelveli District. The petitioner seeks such re-assessment should be done consequent to a representation given by the petitioner on 13.01.2023.

2.Heard Mr.G.Prabhu Rajadurai, learned Counsel for the petitioner, Mr.Veerakathiravan, learned Additional Advocate General assisted by Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents 1 to 3, and Mr.T.Mohan, learned Senior Counsel assisted by Ms.D.Geetha, learned Counsel for the fifth respondent.

3.Even before proceeding with the facts of the case, to the extent possible, let me first examine the parties to the Writ Petition. The Writ



Petition has been filed by K.Pattulakshmi, who is the Chairperson of the Sankar Nagar Special Grade Town Panchayat, Tirunelveli District. The first respondent is the Director of Town Panchayat, Urban Administrative Office Complex, Chennai, who is the overriding authority to grant permission particularly, building planning permission for layouts, which are formed and plots are sold. The second respondent is the unfortunate District Collector of Tirunelveli, whose order is questioned by the petitioner herein and whose order was earlier questioned by the fifth respondent, P.Radhasankar. Incidentally, the said P.Radhasankar is the Developer of the said layout, now called, Sankar Nagar Layout. The third respondent is the Assistant Director and probably, since the Director has been impleaded as a first respondent for good measure, the third respondent has also been impleaded as a respondent to the Writ Petition. The fourth respondent is the Sankar Nagar Special Grade Town Panchayat represented by its Executive Officer and for all practical purposes, it can be inferred that the petitioner and the fourth respondent go hand in hand in all the issues raised by the petitioner herein as contested by the fifth respondent.



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4.The entire story started nearly about a decade and half back. The fifth respondent along with two others had purchased substantial lands at S.Nos.437/1, 438/1 and 439/1 measuring 16.34 acres at Narayanammal Village, Tirunelveli. They had then submitted an application on 25.08.2005 for approval of layout by dividing the aforementioned area of lands into plots and by selling it to various purchasers. I am informed that there are still about 245 or 234 plots available unsold and as on date, I am further informed that only about 20 plots had actually been sold.

5.After the application had been given by the fifth respondent/developer, the Special Grade Town Panchayat, who is represented by its Executive Officer and who is the competent authority to examine such an application, had forwarded the same to the first respondent, Director, Town Panchayat, Urban Administrative Office Complex, Chennai, by a letter dated 28.10.2005 in Na.Ka.No.272/2005. The first respondent on 07.02.2006 had granted approval for forming the layout. Naturally, it was granted with conditions.



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6.The conditions under which it was granted had been enclosed as a document along with the Writ Petition. There were several conditions. But, it is uniformly accepted by the learned Counsel appearing for the petitioner and also by the learned Senior Counsel appearing for the fifth respondent that the Court need examine only the conditions 1-4. Let me extract the said conditions in entirety, which are follows:

“(1)மனைகள் மற்றும் தெருக்கள் அங்கீகரிக்கப்பட்டு ம.வ./ந.ஊ.இ.எண்.23/2006 என எண்ணிடப்பட்ட வரைப்படத்தின்படி எல்லைக்கற்களால் வரையறுக்கப்பட வேண்டும். மனைப்பிரிவுக்குள் வரும் தெருக்கள் அனைத்தும் தமிழ்நாடு மாவட்ட நகராட்சிகள் சட்டம் 175 மற்றும் 179-ம் பிரிவுகளின்படி 300(8) பிரிவின் கீழ் ஏற்படுத்தப்பட்ட உபவிதிகளின்படி/ஊராட்சி கட்டட விதிகள் 3(5)-ன் படி ஏற்படுத்தப்பட்டுள்ள விதிகளுக்கேற்ப சரளைக்கற்களைக் கொண்டு மனுதாரரால், நிர்வாக அதிகாரியால் (Executive Authority) நிர்ணயிக்கப்படும் மட்டத்திற்கும் அகலத்திற்கும் அமைக்கப்பட வேண்டும்.

(2)அத்தோடு தேவையான பாலங்கள், சாக்கடை வடிகால், துப்புரவு வசதி, தெரு விளக்கு ஆகிய வசதிகளை நிர்வாக அதிகாரியின் கருத்திற்கொப்ப மனுதாரர் அமைத்துத் தர வேண்டும்.

(3)நகர் ஊரமைப்புத் துறையால் அங்கீகரிக்கப்பட்ட வரைபடத்திற்கு மாறாக மனையின் அளவுகள், சாலைகளின் அமைப்புகள், அளவுகள், பொது ஒதுக்கீடு அளவுகள் ஆகியவற்றை மாற்றுதல் மற்றும் மனையை மேலும் உட்பிரிவு செய்தல் ஆகியவற்றை எக்காரணத்தை முன்னிட்டும் நகர் ஊரமைப்பு துறையின் முன் ஒப்புதலின்றி செய்தல் கூடாது.

(4)அங்கீகரிக்கப்பட்ட இம்மனைப்பிரிவில் உத்தேசிக்கப்பட்டுள்ள சாலைகளை மனைப்பிரிவு உரிமையாளர் முறையாக அமைத்து அல்லது அதற்குரிய



கட்டணத்தைச் செலுத்தி சம்பந்தப்பட்ட ஊராட்சி
மன்றத்திற்கு உரிய படிவத்தில் பதிவு செய்து பொதுச்
சாலையாக பராமரிக்க ஊராட்சி மன்றத் தலைவருக்கு
தானமாக ஒப்படைக்க வேண்டும்.□

7. Much reliance has been placed on condition No.1 above extracted. This stipulates that the fifth respondent/developer should build, as a pre-condition for final approval or after selling the plots for the benefit of those who purchased the plots to get approval of their building plan, to put up, in accordance with Sections 175 and 179 of the District Municipalities Act, and also various other provisions, which had been stated therein, culverts, drainage/sewerage system, sanitary system, street lights and of-course, roads. These are internal roads within the layout and street lights in those roads within the layout.

8. I presume that the layout also included a plan, where the roads would be laid. It had been assessed by a Junior Engineers that about 15 street lights are required. The contentious condition is the cost for putting up all these amenities, namely, the roads, the street lights, the culverts and the drainage system. It was commonly expected by everybody that the developer should bear the costs.

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9. But the learned Senior Counsel for the fifth respondent placed reliance on the fourth condition, wherein, there were two options given, that either the developer puts up the roads and the street light or funds the Panchayat, who have to put up the roads and street lights. In this case, the developer had chosen the first option that he would put up the roads and street lights. Putting up roads is one aspect, but maintaining the roads is another aspect. The cost was initially worked to around Rs. 5,00,000/-.

10. Let me not state the exact precise amount, but that was an estimate. This estimate was not to the liking of the fifth respondent herein and questioning that, a Writ Petition in W.P.(MD)No.10270 of 2007 was filed by the fifth respondent. But even prior to filing that, the fifth respondent had become accustomed to coming over to Court and filing Writ Petitions and had apparently taking a liking to such filing of Writ Petitions. He had earlier actually filed W.P(MD)No.3466 of 2007. The relief sought in that particular Writ Petition, which was filed by the



fifth respondent herein along with three others, and I do not now know what happened to other three individuals, was for a Certiorified Mandamus seeking records of the first respondent therein, namely, the Sub Registrar, at Sub Registrar Officer No.II, Tirunelveli, dated 06.03.2007, apparently from a reading of the order, since the Sub Registrar had refused to register the house plots, for which sale deeds were presented for registration.

11.It was contended that the plots were unapproved. There were some issues relating to the development charges. This would also necessarily include the charges for providing roads, street lights, drainage system and culverts. A learned Single Judge by an order dated 26.07.2007, had thought it fit to bringing an entirely new authority into the picture and had dragged the District Collector of Tirunelveli, to intervene, as the learned Single Judge said, *“to intervene and enquire into the matter and find out as to whether the development charges need to be paid by the petitioner. If so, what is the original state of affairs, as the development charges payable by the petitioner, if any it would be intimated by the District Collector, Tirunelveli to the petitioner. In the*



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event of the Collector finding that the petitioner need to pay any amount, ie., development charges, the same should be paid within a time frame to be fixed by the Collector.”

12.This order thrust the responsibility on the Collector to discharge a duty, which he never imagined, he would be called upon to discharge in the course of his official duty. The Court had directed the Collector to do so and he was therefore bound to do. He then took up this onerous task of determining that estimate/development charges. At that point of time, after working out various modalities, the District Collector had determined that the charges would be Rs.5,83,750/.

13.I really hope that the fifth respondent had accepted to that charge and had paid it. The matter would have ended there. But no, he did not. For some reason best known and probably because he had taken an affinity to filing Writ Petitions and finding that orders were being passed by thrusting the responsibility not on the developer but on a third party, who could be found fault with, W.P.(MD)No.10270 of 2007 came to be filed questioning that assessment. A learned Single Judge, who had



enquired into that particular Writ Petition, by an order, dated 28.11.2008, again found fault with the Collector for not having followed the principles of natural justice or rather not giving opportunity to all the parties or rather not giving effective opportunity to all the parties and therefore, held that the entire issue must be re-assessed and re-worked by the District Collector after giving due opportunity.

14.Naturally, as time passed, the estimate would only increase and not decrease. The fifth respondent should have known that the estimate determined in 2005 was Rs.5 lakh and odd and the time when the order was passed in the year 2008, it shall have increased atleast by another 50%. That is what had happened actually.

15.Thereafter, the entire issue was re-examined by the District Collector and he had then estimated the cost at Rs.17,63,828/-. Thus, if the estimate of Rs.5,00,000/- and odd had been accepted would have put an end to the entire issue, but the estimate had now multiplied to Rs.17,63,828/-.



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16.This estimate was again objected to by the petitioner herein. At least, the petitioner could have put an end to his litigative attitude and accepted that amount. But complaining that the required procedures as directed by the Court was not followed, the fifth respondent filed W.P. (MD)No.13945 of 2010. This Writ Petition was on the board of this Court for nearly ten years. The estimate would naturally have again multiplied and multiplied.

17.I am not able to comprehend the rationale behind questioning every order, complaining of opportunity not being given, when actually, the estimate would only increase and certainly not be stagnated.

18.The learned Single Judge by an order, dated 07.09.2020, instead of trying to find a solution between the petitioner herein and the fifth respondent, again started to find fault with the Collector of Tirunelveli and the manner in which he had estimated that particular amount.

19.It must be stated to the defence of the District Collector that nowhere was there any obligation as part of his official duty to discharge



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this particular work. But as stated above, he had to do it consequent to an order of this Court.

20.The order of the Collector was therefore set aside and the learned Single Judge in the order W.P.(MD)No.13945 of 2010, again gave a string of directions, as to how the Collector should now work out the calculations and forward to the fifth respondent herein, who should pay the amount. It must be kept in mind that originally, the fifth respondent had agreed that he would bear the costs and lay the roads and other aspects and it is towards the estimate of those aspects that the District Collector had worked out the aforementioned amount of about Rs.17 lakhs.

21.If I were to sit on the seat of the District Collector, I would very well understand the frustration and agony which he should have gone through. He is not an expert to determine the cost of say, street lights. He can always call upon a report from the Engineers. But there again, he would always be found fault with, since that is an estimate not prepared by him, but by another official and he would have to lean on to that



particular estimate. As years passed by again, the District Collector thought that putting the matter off would probably draw the petitioner and the fifth respondent herein, if they were a little sensible, to the drawing table to work out an efficacious remedy between themselves.

22.He was unfortunately faced with a contempt petition filed against him. That was in Cont.P(MD)No.1209 of 2022 filed by the fifth respondent.

23.Once this Contempt Petition had been filed, as any public servant would naturally do, an order was passed. That order is challenged in this particular Writ Petition.

24.In that particular order, the District Collector had placed reliance on his own assessment of what should be done and had finally stated that a total a sum of Rs.19,88,280/- is the amount required for putting up these basic amenities by the fifth respondent herein. But it must be again kept in mind that this was in the year 2022. The original assessment of Rs.16 lakhs and odd was in the year 2010. The actual



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assessment in the year 2005 was for Rs.five lakhs and odd. When between 2005 and 2010, the amount had practically tripled, between 2010 and 2020, the amount should have atleast have doubled. The same estimate it was retained in the year 2022 with only a marginal increase.

25.The learned Senior Counsel on behalf of the fifth respondent relied on a report of a Junior Engineer. I do not know under authority, the Junior Engineer went around determining the cost of lamp posts and cost of electric bulbs and determined that a sum of Rs.5,000/- would be an optimum amount to fix for one electric pole and for about 26 or 23 posts, determined a sum of Rs.1,15,000/- should be paid by the fifth respondent. There is yet another letter, which indicated that the fifth respondent should pay a sum of Rs.1,002/-. These amounts were paid by the fifth respondent. The fifth respondent apparently was of the opinion that since the amounts had been paid, he could sit back and wait for everybody else to do whatever was expected of them.

26.The grievance of the learned Senior Counsel on behalf of the fifth respondent is that the roads were laid in the year 2005 and the



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responsibility therefore automatically shifted to the Writ Petitioner herein to maintain the road. Owing to non-usage of the roads for 15 long years, they had worn out. The fifth respondent refused to pay a single paise for re-laying the road or for putting the road in better shape. This attitude is condemnable. After all the object of the fifth respondent should be to provide amenities for the benefit of those for whom he had laid the plots and to whom he is going to sell the plots for valuable consideration. They are not in small in number. There are more than 200 plots available for sale. But, he could not sell the same, since any building permission which is filed would have to pass through the Writ Petitioner's table and the Writ Petitioner is not prepared to grant approval unless, the roads are laid, the culverts are put and the street lights are put.

27. This Court had fervently hoped that some sense and sensibility would prevail upon the petitioner and the fifth respondent, instead of them falling back on pride and refusing to sit on the drawing board. They could have, without any prejudice to either of them, sat across the table and determined the value which could be incurred for laying of these roads or re-laying of these roads and putting up of street lights.



Unfortunately, there is no be meeting of minds between the petitioner and the fifth respondent in this regard.

28.The grievance raised by the learned Counsel on behalf of the petitioner is that before passing of the impugned order, there was no effective opportunity given to the petitioner herein. It is stated that the petitioner was not called upon to give their estimate as to what actually would be the cost for putting up the road, street lights and such other amenities, as on the prevailing date and that in a hasty manner, the District Collector has passed the order.

29.A counter affidavit had been filed by the District Collector and since he had passed the impugned order, there was no other option available for him but to justify the said order.

30.This Court on the last occasion had orally indicated to the learned Senior Counsel for the fifth respondent to put a word across to the prospective purchasers of the plots whether the expenses incurred could be shared among them. But, this suggestion was turned down



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today, only because the learned Counsel for the petitioner herein stated that according to them, a total sum of Rs.2,00,00,000/- is required for putting up all these amenities. This is an unreasonable demand on behalf of the petitioner herein. The petitioner should realise that they should, in the first place, be reasonable in their demand or in their assessment of the estimate of the expenditures involved. There cannot be a sky high figure quoted and they cannot expect the fifth respondent who had actually performed acts according to the rules and regulations, to now part with such a huge amount. Again, the petitioner herein who questions the order of the District Collector, should also realise that they should come down to actuality of the costs involved in putting up all these amenities.

31.The learned Senior Counsel for the fifth respondent pointed out a letter, dated 27.10.2020 issued by the District Collector, Tirunelveli in Na.Ka.No.3961/2020/Pa3. Having found himself in the straight line of fire, the District Collector had, after extracting the unfortunate situation in which he had been put to, not owing to any of his fault, had finally stated that there would be a meeting in his office on 03.11.2020 at 11.30 am to determine all these aspects. This was addressed to the fifth



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respondent herein and also to the learned Counsel for the fifth respondent and also to the Executive Officer of Sankar Nagar Special Grade Town Panchayat, who is the fourth respondent herein. The fourth respondent should have undertaken the responsibility of attending that particular meeting and putting forth their estimate required for laying down the roads and other aspects.

32. Quite significantly, there is no representation on behalf of the fourth respondent before this Court. No Advocate had come forward to advance arguments. They had taken a conscious decision to abstain from participating in these proceedings. Probably, since the fourth respondent had taken a decision to remain absent, the petitioner herein has now been thrust with the task to question the order of the District Collector. It is complained that the petitioner was not put on notice. But the petitioner should first question the fourth respondent as to why they did not take up this opportunity of putting their views before the District Collector. The District Collector cannot be expected to issue notice to each and every person surrounding the area and ask their views. He had thought that the fifth respondent, as the developer and the fourth respondent, as the



Executive Officer of the Town Panchayat would be the responsible individual and be sufficient to put forth various views regarding all these aspects.

33. The Panchayat has now surfaced out of this air and I hold that this could very well be a shadow litigation by the petitioner herein on behalf of the fourth respondent to cover that dereliction of duty of the fourth respondent in not appearing before the District Collector and putting forth their views of the estimate required for laying down the roads and street lights.

34. No doubt, the estimate would have escalated by now. But this Court is neither an expert nor in a position to determine the costs of roads and street lights. Quiet honestly, it is not. Neither is the District Collector an authority nominated by any of the statute to do this particular work. He was called as a medium to arbitrate the issue between the petitioner and the fifth respondent, as a matter of fact, between the fourth respondent and the fifth respondent. Unfortunately, the fourth respondent had not taken up the responsibility and I must hold



that they did not discharge the duty expected on them. The estimate in the impugned order therefore stands.

35.I am deeply conscious that on an earlier occasion, a learned Single Judge had directed the District Collector to follow procedures to determine the estimate. I am not prepared to do that. The order of the District Collector stands. If at all the petitioner seeks that further amount are required, then they may address the fifth respondent independently, and the fifth respondent must realise that the plots can be sold for a marketable rate only if he also extends a co-operating hand. He must forward and sit across the table with the petitioner herein. There must be at some point, a realisation that everybody has eyes in front to look ahead and not at the back. There is no point going backwards and complaining that they have discharged their obligations from the year 2005 onwards and that they would not discharge any further work. This would not be to the advantage of either the petitioner or the fifth respondent.

36.I would not interfere with the order of the District Collector. But I would place a caveat that if it all the plots are to be approved, then



the conditions that the roads should be re-laid, the street lights should be put and culverts should be laid, can never ever be against the petitioner herein.

37.The learned Senior Counsel for the fifth respondent came forward and stated that the fifth respondent would part with expenses towards putting up street lights and bulbs. Let the fifth respondent do it. The roads have worn out. It is not the fault of the fifth respondent herein. The costs had escalated, but again that is not the fault of the fifth respondent. Even if the Writ Petition had been filed in the year 2010 and had not been taken up for consideration till the year 2020, nothing prevented the present petitioner herein from approaching the Court or approaching the fifth respondent directly in that ten year period and working out the modalities of the amount required.

38.Much water has now flowed and both the parties have hardened their stands and are not prepared to take a conciliatory step forward and take a rationale decision in this regard. But I would still place an obligation on both of them certainly not in their interest, but in the



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interest of innocent purchasers, who have to part with the substantial amount for the plots, that the petitioner and fifth respondent join hands in this aspect and try to provide the basic minimum facilities to the purchasers.

39.Placing this obligation on them, I hold the Court cannot interfere on issues like this. The District Collector's order is questioned only because the District Collector had been nominated by an earlier order of the Court and certainly not as a statutory authority or as a quasi judicial authority, whose order could be questioned in Article 226 of Constitution. I would therefore dismiss the Writ Petition.

40.I would also place an obligation that if building plans are presented, they may be approved, but if any of the plots owners raise objections as to the quality of the roads, there is no obligation on the part of the petitioner to put up any further amenity. The purchasers run the risk.

41.So far as the amenities are concerned, I would leave it to the



fate of the Sankar Nagar Layout residents to face that aspect. The purchasers will have to accept that they have purchased plots in the midst of quarrels between the petitioner herein and the fifth respondent herein and therefore, the layout is bereft of facilities.

42.I am deeply conscious that no effective order is passed, but I would again place the responsibility on the petitioner and the fifth respondent, to still sit down, talk and resolve the issue between them. The Court cannot be called upon to adjudicate on this dispute, which has now come down to a private *lis* between the petitioner and fifth respondent.

43.The other aspect relates to the basis on which the District Collector, based on his calculation. It is complained it was on the basis of a Government Order relating to an unapproved plots. This stand is rejected by me since the District Collector's knowledge goes only to that extent and he is not a statutory authority, cannot be expected to do anything better and can only extend an invitation to participate in a discussion which he had done to the fourth respondent had if the fourth



respondent is not responded, the petitioner cannot now fault the order of the District Collector. It is for the petitioner and the fifth respondent to work out the modalities. If they do, they may be appreciated. If they don't, the plots may not be sold and even if sold, the fifth respondent would still be faced litigations for not putting up quality roads, for not putting up a quality drainage system, for not putting up quality culverts. That is an issue, which the fifth respondent will have to answer the plot owners.

44.If any further amenities are required by those who had purchased plots, they may give a representation to the petitioner or fourth respondent or fifth respondent to provide them such amenities and the petitioner or fourth respondent or fifth respondent may laid down conditions, under which such facilities would be granted.

45.The Writ Petition stands dismissed with the above observations.

No costs. Consequently, connected miscellaneous petitions are closed.

Index :Yes / No
Internet :Yes

16.06.2023

25/27



NCC

: Yes/No

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To

1.The Director of Town Panchayat,
Urban Administrative Office Complex,
7th and 8th Floor,
No.75 Santhome Highway,
Raja Annamalaipuram, Chennai- 28.

2.The District Collector,
Tirunelveli, Tirunelveli District.

3.The Assistant Director,
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C.V.KARTHIKEYAN, J.

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Order made in
W.P.(MD)No.1481 of 2023

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