

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 30413 of 2014 (B)

PETITIONER(S) :

1. **MRS.VIJAYAM MURALEEDHARAN**
AGED 54 YEARS, W/O. MR. MURALEEDHARAN,
'PANJAJANYAM' HOUSE, UDAYAMPEROOR P.O.,
MANAKUNNAM VILLAGE, ERNAKULAM, PIN-682 307.
2. **MR. E.B.VENUGOPALAN**
AGED 52 YEARS, S/O.LATE MR.BHASKARAN NAIR
PALAZHIYIL EDAVAZHICKAL HOUSE, UDAYAMPEROOR P.O.,
ERNAKULAM, PIN - 682 307.
3. **MRS. SHINY WILSON, AGED 48 YEARS**
W/O.MR.WILSON PAULOSE, NEDUMPURATHU,
UDAYAMPEROOR P.O., ERNAKULAM - 682 307
NOW RESIDING AT NEDUMPURATHU HOUSE
KUREEKADU P.O., KANDANADU, PIN- 682 305.

BY ADV. VARGHESE P. CHACKO

RESPONDENT(S) :

1. **STATE OF KERALA**
REPRESENTED BY THE SECRETARY
DEPARTMENT FOR LOCAL SELF GOVERNMENT,
SECRETARIATE, THIRUVANANTHAPURAM - 695 001.
2. **UDAYAMPEROOR GRAMA PANCHAYATH**
REPRESENTED BY ITS SECRETARY, UDAYAMPEROOR P.O.,
ERNAKULAM, PIN- 682 307.
3. **THE SECRETARY**
UDAYAMPEROOR GRAMA PANCHAYATH,
UDAYAMPEROOR P.O., PIN- 682 307.
4. **THE DISTRICT MEDICAL OFFICER**
DISTRICT MEDICAL OFFICE, ERNAKULAM - 682 011.
5. **THE ENVIRONMENTAL ENGINEER**
KERALA STATE POLLUTION CONTROL BOARD
DISTRICT OFFICE, GANDHI NAGAR, KOCHI 20.

...2/-

6. THE CHAIRMAN
WATER APPELLATE AUTHORITY
THIRUVANANTHAPURAM, PIN - 695 001.
7. THE CHAIRMAN
AIR APPELLATE AUTHORITY,
THIRUVANANTHAPURAM, PIN - 695 001.
8. THE ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD
THRIPUNITHURA SUB DIVISION, PIN -682 301.
9. M/S. DHANYA HOLLOW BRICKS
UDAYAMPEROOR P.O., ERNAKULAM - 682 307
REPRESENTED BY IT'S PROPRIETRIX
SMT. P.G.SATHYABHAMA, VANDANA VIHAR,
UDAYAMPEROOR P.O., ERNAKULAM - 682 307.

R1, R4, R6 & R7 BY GOVT. PLEADER SMT. LILLY LESLIE
R2 & R3 BY ADVS. SRI.P.N.SUKUMARAN
SRI.K.A.ANAS
R5 BY ADV. SRI. M.AJAY, SC
R8 BY ADV. SRI.SAJEEVKUMAR K.GOPAL, SC
R9 BY ADV. SRI.K.I.MAYANKUTTY MATHER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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...3/-

APPENDIX

PETITIONER(S)' EXHIBITS :

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| EXHIBIT P1(a). | ORIGINAL PHOTO OF THE RESIDENTIAL HOUSE OF THE 1ST PETITIONER STANDS COVERED DUE TO POLLUTION. |
| EXHIBIT P1(b). | ORIGINAL PHOTO OF THE RESIDENTIAL HOUSE OF THE 2ND PETITIONER STANDS COVERED DUE TO POLLUTION. |
| EXHIBIT P1(c). | ORIGINAL PHOTO OF THE 9TH RESPONDENT POLLUTING HOLLOW BRICKS MANUFACTURING UNIT. |
| EXHIBIT P2. | COPY OF THE MEDICAL CERTIFICATE DATED 13.10.14 ISSUED IN THE NAME OF THE 1ST PETITIONER. |
| EXHIBIT P3. | COPY OF THE MEDICAL CERTIFICATE DATED 15.10.14 ISSUED IN THE NAME OF THE WIFE OF THE 2ND PETITIONER. |
| EXHIBIT P4. | COPY OF THE MASS PETITION DATED 24.10.13 FILED BY THE PETITIONERS AND LOCAL RESIDENTS. |
| EXHIBIT P5. | COPY OF THE PETITION DATED 09.11.13 FILED BY THE PETITIONERS BEFORE THE SHO UDAYAMPEROOR AGAINST THE 9TH RESPONDENT. |
| EXHIBIT P6. | COPY OF THE DIRECTION NO.C2-23686/12 DATED 14.02.14 ISSUED BY DISTRICT MEDICAL OFFICER (HEALTH) TO THE SECRETARY UDAYAMPEROOR GRAMA PANCHAYATH. |
| EXHIBIT P7. | COPY OF THE RTI REPLY NO.C2-23686/12 DATED 15.02.14 ISSUED THE PUBLIC INFORMATION OFFICER, DISTRICT MEDICAL OFFICE (HEALTH), ERNAKULAM. |
| EXHIBIT P8. | COPY OF THE REPORT NO.603/13 DATED 22.01.14 FILED BY MEDICAL OFFICER IN CHARGE, COMMUNITY HEALTH CENTRE, KEECHERI BEFORE THE DISTRICT MEDICAL OFFICER (HEALTH), ERNAKULAM. |
| EXHIBIT P9. | COPY OF ORDER NO.C2-23686/12 DATED 19.07.13 ISSUED BY DISTRICT MEDICAL OFFICER (HEALTH) ERNAKULAM TO THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH ALONG WITH A READABLE COPY. |
| EXHIBIT P10. | COPY OF THE CONSENT REVOKE ORDER NO.PCB/DO-EKM/HBO-15/09 DATED 09.07.13 ISSUED BY THE SENIOR ENVIRONMENTAL ENGINEER, KERALA STATE POLLUTION CONTROL BOARD. |
| EXHIBIT P11. | COPY OF THE LETTER NO.PCB/DO-EKM/HBO-15/09 DATED 24.05.13 ISSUED BY THE CHIEF ENVIRONMENTAL ENGINEER, ERNAKULAM TO THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH. |

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- EXHIBIT P12. COPY OF THE NOTICE NO.PCB/DO-EKM/HBO-15/09 DATED 24.05.13 ISSUED BY THE CHIEF ENVIRONMENTAL ENGINEER, ERNAKULAM TO THE 9TH RESPONDENT.
- EXHIBIT P13. COPY OF THE LETTER NO. PCB/RO-EKM/GEN/35/11 DATED 10.05.13 ISSUED BY THE CHIEF ENVIRONMENTAL ENGINEER, ERNAKULAM TO THE SENIOR ENVIRONMENTAL ENGINEER, DISTRICT OFFICE, ERNAKULAM.
- EXHIBIT P14. COPY OF THE SHOW CAUSE NOTICE NO.PCB/DO-EKM/HBO-15/09 DATED 17.02.12 ISSUED BY THE SENIOR ENVIRONMENTAL ENGINEER, ERNAKULAM TO THE 9TH RESPONDENT.
- EXHIBIT P15. COPY OF THE CONSENT TO OPERATE NO.PCB/EKM/DO1/ICO/HB-02/2012 DATED 10.02.2012 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD, DISTRICT OFFICE, ERNAKULAM TO THE 9TH RESPONDENT.
- EXHIBIT P16. COPY OF THE LETTER NO.C1-5613/14 DATED 14.08.14 ISSUED BY THE SECRETARY UDAYAMPEROOR GRAMA PANCHAYATH TO THE HUSBAND OF THE 1ST PETITIONER.
- EXHIBIT P17. COPY OF THE NOTICE NO.C1-5613/14 DATED 14.08.14 ISSUED BY THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH TO THE 9TH RESPONDENT.
- EXHIBIT P18. COPY OF THE LETTER NO.A4-3363/13 DATED 17.12.13 ISSUED BY THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH TO THE DEPUTY DIRECTOR OF PANCHAYATH, ERNAKULAM.
- EXHIBIT P19. COPY OF THE APPLICATION DATED 03.12.13 FILED BY THE 9TH RESPONDENT BEFORE THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH ALONG WITH A READABLE COPY.
- EXHIBIT P20. COPY OF THE NOTICE DATED 25.11.13 ISSUED BY THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH TO THE 9TH RESPONDENT ALONG WITH A READABLE COPY.
- EXHIBIT P21. COPY OF THE NOTICE DATED 23.09.13 ISSUED BY THE SECRETARY, UDAYAMPEROOR GRAMA PANCHAYATH TO THE 9TH RESPONDENT ALONG WITH A READABLE COPY.
- EXHIBIT P22. COPY OF THE STAY ORDER DATED 01.08.13 IN IA.NO. 31/13 IN APPEAL NO.16/13 PASSED BY THE HONOURABLE WATER APPELLATE AUTHORITY, THIRUVANANTHAPURAM.
- EXHIBIT P23. COPY OF THE STAY ORDER DATED 01.08.13 IN IA.NO. 32/13 IN APPEAL NO.17/13 PASSED BY THE HONOURABLE AIR APPELLATE AUTHORITY, THIRUVANANTHAPURAM.

(Contd...)

- EXHIBIT P24. COPY OF THE JUDGMENT DATED 10.12.13 IN WP(C) NO. 30436/13 PASSED BY THE HONOURABLE HIGH COURT OF KERALA.
- EXHIBIT P25. COPY OF THE CIRCULAR NO.PCB/TAC/18/2004 DATED 09.08.04 PUBLISHED BY THE KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P26. COPY OF THE CIRCULAR NO.PCB/T4/115/97 DATED 27.08.11 PUBLISHED BY THE KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P27. COPY OF THE CIRCULAR NO.PCB/T4/115/97 DATED 20.07.11 PUBLISHED BY THE KERALA STATE POLLUTION CONTROL BOARD.
- EXHIBIT P28. COPY OF THE DEMAND NOTICE DATED 28.08.14 ISSUED BY THE PETITIONERS TO THE 8TH RESPONDENT AND OTHERS.

RESPONDENTS' EXHIBITS & ANNEXURES :

- ANNEXURE R5(a) COPY OF THE LETTER NO. PCB/DO-EKM/HBO-15/09 DATED 5.2.2010.
- ANNEXURE R5(b) COPY OF THE LETTER SUBMITTED BY THE 9TH RESPONDENT DATED 10.8.2010.
- ANNEXURE R5(c) COPY OF THE NOTICE ISSUED TO THE 9TH RESPONDENT ON 13.12.2010.
- ANNEXURE R5(d) COPY OF THE MINUTES OF THE HEARING.
- ANNEXURE R5(e) COPY OF THE DIRECTION ISSUED TO THE 9TH RESPONDENT ON 3.1.2012.
- ANNEXURE R5(f) COPY OF THE SHOW CAUSE NOTICE ISSUED TO THE 9TH RESPONDENT ON 17.12.2012.
- ANNEXURE R5(g) COPY OF THE LETTER ISSUED BY THE CHIEF ENVIRONMENTAL ENGINEER.
- ANNEXURE R5(h) COPY OF THE NOTICE ISSUED FROM THE CHIEF ENVIRONMENTAL ENGINEER TO 9TH RESPONDENT.
- ANNEXURE R5(i) COPY OF THE LETTER ISSUED TO THE UDAYAMPEROOR GRAMA PANCHAYAT.
- ANNEXURE R5(j) COPY OF THE LETTER SUBMITTED BY THE 9TH RESPONDENT ON 10.6.2003.

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ANNEXURE R5(k)	COPY OF THE CONSENT REVOKE ORDER DATED 9.7.2013.
EXHIBIT R9(a)	COPY OF THE BUILDING PERMIT ISSUED BY THE UDAYAMPEROOR GRAMA PANCHAYATH DATED 11.3.2008.
EXHIBIT R9(b)	COPY OF THE LICENCE ISSUED BY THE UDAYAMPEROOR GRAMA PANCHAYATH DATED 4.4.2014.
EXHIBIT R9(c)	COPY OF THE NO-OBJECTION CERTIFICATE ISSUED BY THE ASSISTANT DIVISIONAL OFFICER, FIRE AND RESCUE DEPARTMENT, ERNAKULAM DATED 7.3.2008.
EXHIBIT R9(d)	COPY OF THE NO-OBJECTION CERTIFICATE ISSUED BY DISTRICT MEDICAL OFFICER DATED 6.7.2009.
EXHIBIT R9(e)	COPY OF THE CERTIFICATE ISSUED BY THE GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM DATED 7.1.2008.
EXHIBIT R9(f)	COPY OF THE CONSENT TO OPERATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD DATED 10.2.2012.
EXHIBIT R9(g)	COPY OF THE REPLY/EXPLANATION SUBMITTED BY THIS RESPONDENT DATED 4.1.2013.
EXHIBIT R9(h)	COPY OF THE REPLY SUBMITTED BY THIS RESPONDENT DATED 4.6.2013.
EXHIBIT R9(i)	COPY OF THE STOP MEMO/NOTICE ISSUED BY UDAYAMPEROOR GRAMA PANCHAYATH DATED 23.9.2013.
EXHIBIT R9(j)	COPY OF THE REPLY GIVEN TO THE UDAYAMPEROOR GRAMA PANCHAYATH BY THIS RESPONDENT DATED 7.10.2013.
EXHIBIT R9(k)	COPY OF THE STOP MEMO NOTICE ISSUED BY THE UDAYAMPEROOR GRAMA PANCHAYATH DATED 25.11.2013.
EXHIBIT R9(l)	COPY OF THE APPEAL FILED BY THIS RESPONDENT DATED 18.7.2013.
EXHIBIT R9(m)	COPY OF THE REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER BEFORE THE APPELLATE AUTHORITY DATED 3.6.2014.
EXHIBIT R9(n)	COPY OF THE MINUTES OF THE MEETING OF THE 2ND RESPONDENT HELD ON 15.6.2015 ALONG WITH THE COVERING LETTER DATED 19.6.2015.

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P.A. TO JUDGE

ANU SIVARAMAN, J.

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W.P. (C) No. 30413 of 2014

Dated this the 16th day of September, 2015

J U D G M E N T

This writ petition is filed with the following prayers:

- i. issue a Writ, order or direction in the nature of mandamus, so as to quash Exhibit P22 and Exhibit P23 stay orders passed by the 6th respondent and 7th respondent Water and Air Appellate Authority, respectively And this Honourable Court may be pleased to urgently direct the 9th respondent polluter to shift it's operation into any remote place far away from the domestic enclave of the petitioner or to stop all further operations with immediate effect.*
- ii. issue a Writ, order or direction in the nature of mandamus directing the 8th respondent Kerala State Electricity Board to disconnect the electric supply to the 9th respondent polluter for continuing violation of the terms and conditions of the permit or license, with immediate effect*

2. It is the contention of the petitioners, three in number, that they are residing in the vicinity of the 9th

respondent's industrial unit engaged in manufacture of cement hollow bricks.

3. It is stated that the unit of the 9th respondent is causing severe environmental pollution and it is resulting in serious medical problems to the petitioners and other residents of the locality. The petitioners as well as others residing in the area had therefore approached authorities in the Panchayath as well as the Health Department and the Pollution Control Board pointing out the severe environmental pollution being caused by the 9th respondent's unit and seeking appropriate directions for closing down the unit. It is stated by the counsel appearing for the petitioners that the 1st petitioner's residential house is located within 2.8 metres from the compound wall of the 9th respondent's property and his window is within 60 centimetres of the said compound wall.

3. In the above circumstances, it is stated that the 1st petitioner is being subjected to severe air pollution due to the working of the 9th respondent's unit and is unable to live in peace in his own property. It is further stated that the unit is functioning without due licence from the Panchayath and that Pollution

Control Board had issued orders revoking the consent granted by it. The water and air appellate authority had, by Exts.P22 and P23 stay orders, stayed the operation of the revocation of consent issued by the Pollution Control Board.

4. It is in the above circumstance, writ petitioners challenge Exts.P22 and 23, interim orders of the appellate authority and seek directions to shift the operation of the 9th respondent's unit. The 5th respondent Pollution Control Board has filed a counter affidavit contending that the Pollution Control Board had conducted an inspection pursuant to an application made by the 9th respondent for integrated clearance and based on the inspection, the 9th respondent was directed to take steps for containing dust emission by Annexure - R5(a) communication dated 05.02.2010. It is stated that the 9th respondent had preferred Ext.R5(b) reply stating that the said conditions have been complied with. Thereafter, the consent had been granted by the Pollution Control Board on specific conditions to contain pollution. However, it is stated that pursuant to a complaint received by the board regarding pollution caused by the functioning of the unit, an inspection was conducted and it was

noticed that certain conditions of the consent had been violated.

5. In the above said circumstance, a show cause notice was issued for revocation of consent and Ext.R5(k) consent revoke order was issued on 09.07.2013. The reasons for revoking the consent order as contained in Ext.R5(k) are the following:

"(1) You have provided two other openings in addition to the door opening to the shed in which operation are carrying out.

(2) You have informed that you were producing about 1100 bricks/day.

(3) The concrete mixer unit is placed in the open area outside the shed."

6. The 3rd respondent Panchayath had also filed a counter affidavit stating that though licence had been issued to the 9th respondent for conducting the hollow bricks unit by Ext.P6 letter, the District Medical Officer, Ernakulam, on the basis of the inspection conducted on a complaint that the unit is functioning without complying with the conditions specified by the Pollution Control Board, required the Panchayath to direct the 9th respondent to stop the functioning of the unit. In the above circumstances, it is stated that without obtaining permission from the DMO, no further steps could be taken by the Panchayath.

7. The 9th respondent had filed a detailed counter affidavit. It is stated in the counter affidavit by the 9th respondent that she had sought permission of the Panchayath for constructing a building for housing the hollow brick unit which was granted by Ext.R9(a) order of the building permit dated 11.03.2008. She has also sought licence to install machinery which was also granted by Ext. R9(b) dated 04.04.2014 and unit had been functioning since then. Ext.R9(d) no objection certificate of the DMO, Ext. R9(e) certification from the General Manager, District Industries Centre and integrated consent dated 10.02.2012 produced as Ext. R9(f) are also obtained by the 9th respondent. It is stated that to all the notices issued by the authorities, replies had been given by the 9th respondent stating that all steps possible to abate the pollution had been taken by the 9th respondent. However, by Ext.R9(k) order dated 25.11.2013, Panchayath directed closure of the unit. Against Ext.R9(k) order of the Panchayath, the 9th respondent had preferred W.P. (C) No.30463/2015 and by Ext.P24 judgment this Court had disposed of the writ petition relegating the 9th respondent to statutory remedy under Section 276 of the Panchayath Raj Act. Till orders are passed by the Panchayath, all

further action to implement the orders under challenge was directed to be kept in abeyance for a period of two months. It is submitted that on consideration of the appeal, an order has now been issued by the Panchayath, which is produced as Ext.R9(n). After considering the contentions of the parties and after conducting the site inspection on 12.06.2015, by the president of Panchayath along with the secretary and standing committee chairman, and considering the report of inspection, the Panchayath has held that the pollution which was complained of by the petitioners in the writ petition has been largely redressed and abated.

8. These matters are discussed in detail in Ext.R9(n) order of the Panchayath. It is found that the complaint regarding the construction of septic tank for the toilets used by the employees has not been completed. As regards reasons pointed out by the Pollution Control Board for revoking the consent given to the industrial unit, the Panchayath on inspection has found that almost all the defects noted by the board have hence been rectified by the 9th respondent. The Panchayath has in Ext.R9(n) order stated that since the consent revoke order stands stayed by

the appellate authority, on the basis of the report of the inspection conducted on 12.06.2015, it appears that the defects noted earlier have been rectified by the 9th respondent. However, since by Ext.P6 order the DMO had directed steps to be initiated for closure of the unit, the licence granted to the 9th respondent is renewed subject to the condition that a fresh consent of the DMO shall be obtained.

9. Heard Sri. Varghese P. Chacko, learned counsel appearing for the petitioners, Smt. Lilly Lesli, learned Government Pleader appearing for 1st and 4th respondents, Sri. P.N. Sukumaran, learned counsel appearing for 2nd and 3rd respondents, Sri. M. Ajay, learned standing counsel appearing for 5th and 6th respondents and Sri. V.V. Asokan, learned senior counsel appearing for the 9th respondent.

10. It is the contention of the petitioners that petitioner, who is a neighbouring resident of the industrial unit being conducted by the 9th respondent is being subjected to unendurable air pollution due to the operating of the unit. It is also contended that as on date, the unit is being conducted without licence since the Panchayath has decided to renew the

licence by Ext.R9(n) only on the production of consent from the DMO. It is stated that in view of the complaints regarding air pollution, the 9th respondent shall not be permitted to operate the unit until the DMO grants consent letter. It is contended by the learned senior counsel appearing for the 9th respondent that the 9th respondent is a person, who has complied with all legal formalities necessary for obtaining a licence for the conduct of the industrial unit. All necessary steps to contain the air and noise pollution have been taken by her. It is stated that she is also possessed of fundamental rights under 19(1)(g) of the Constitution of India and her rights, vis-a-vis those of the petitioners should be balanced. The 9th respondent has a right to carry on an occupation in property exclusively belonging to her. It is submitted that there is sufficient clearance from the building in which the machinery necessary for the construction of the hollow bricks is housed to her own compound wall and contention that the 1st petitioner is residing in close vicinity to the 9th respondent's property cannot be a reason for denying licence, when all other conditions have been complied.

11. The learned counsel appearing for respondents 1 and 2

would also submit that it was after hearing all the persons who had submitted complaints against the functioning of the unit that Ext.R9(n) order has been issued by Panchayath. It is submitted that all aspects of the matter including pollution being caused by the unit as well as the difficulties faced by the residents of the locality have been adverted to in full by the Panchayath while granting Ext.R9(n) order.

12. In the facts and circumstances of the instant case, I am of the opinion that the 9th respondent should be permitted to carry on the industry in her property without causing disturbance to the residents of the locality. It is the case of the Panchayath that most of the serious problems caused by the unit have now been addressed. In the above circumstances, the writ petition is disposed of directing the Pollution Control Board and the 4th respondent DMO, Health to conduct a fresh inspection in the 9th respondent's property within a period of two weeks from the date of receipt of the copy of this judgment. If the measures for rectification of the defects pointed out by the Pollution Control Board in its consent revoke order have been complied with in full and the DMO is satisfied that on the basis of the orders passed by

the Panchayath that no reasons exist for withholding consent, such consent shall be issued by the authorities within two weeks thereafter. The Panchayath shall take further steps for issuance of licence to the 9th respondent, on the basis of the orders to be passed by the DMO and the Pollution Control Board immediately on the receipt of such reports on inspection. Order so passed shall not prejudice the appeals preferred by the 9th respondent before the appellate authority.

The above writ petition is disposed of as above.

Sd/-
ANU SIVARAMAN,
JUDGE

DST

//True copy//

P.A. To Judge