

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.27462 to 27464 of 2017

W.P.No.26722 of 2017

W.P.Nos.19633 to 19636 of 2017

W.P.No.26516 of 2017,

W.P.No.24208 of 2017

W.P.No.15876 of 2017

W.P.No.28143 to 28149 of 2017

W.P.No.14979 of 2017

W.P.No.15758 of 2017

W.P.No.17412 to 17416 of 2017

W.P.Nos.17566 to 17570 of 2017

1 MRS.LATHA RAJINIKANTH ... PETITIONER in WP No.27462/17
REP BY HER AUTHORIZED SIGNATORY MR.MOHAN
MENON SHOP NO.8 FIRST FLOOR DOOR NO.29 C.
P.RAMASAMY ROAD ALWARPET CHENNAI-18

1 MRS.LATHA RAJINIKANTH ... PETITIONER in WP No.27463/17
REP BY HER AUTHORIZED SIGNATORY MR.MOHAN
MENON SHOP NO.9 FIRST FLOOR DOOR NO.29 C.
P.RAMASAMY ROAD ALWARPET CHENNAI-18

1 MRS.LATHA RAJINIKANTH ... PETITIONER in WP No.27464/17
REP BY HER AUTHORIZED SIGNATORY MR.MOHAN
MENON SHOP NO.10 FIRST FLOOR DOOR NO.29
C.P.RAMASAMY ROAD ALWARPET CHENNAI-18

1 MRS. DURGA CHANDRASEKAR ... PETITIONER in WP No.19633/17
W/O. MR. S. CHANDRASEKAR SHOP NO.10 FIRST
FLOOR GREATER CHENNAI CORPORATION
COMMERICAL COMPLEX THIRD AVENUE INDIRA
NAGAR ADYAR CHENNAI 20

1 MRS. DURGA CHANDRASEKAR ... PETITIONER in WP No.19634/17
W/O. MR. S. CHANDRASEKAR SHOP NO.15 GROUND
FLOOR GREATER CHENNAI CORPORATION

COMMERICAL COMPLEX THIRD AVENUE INDIRA
NAGAR ADYAR CHENNAI 20

1 MRS. DURGA CHANDRASEKAR ... PETITIONER in WP No.19635/17
W/O. MR. S. CHANDRASEKAR SHOP NO.14 GROUND
FLOOR GREATER CHENNAI CORPORATION
COMMERICAL COMPLEX THIRD AVENUE INDIRA
NAGAR ADYAR CHENNAI 20

1 MRS. DURGA CHANDRASEKAR ... PETITIONER in WP No.19636/17
W/O. MR. S. CHANDRASEKAR SHOP NO.16 GROUND
FLOOR GREATER CHENNAI CORPORATION
COMMERICAL COMPLEX THIRD AVENUE INDIRA
NAGAR ADYAR CHENNAI 20

1 MR.V.NANDAKUMAR ... PETITIONER in WP No.26516/17
S/O.MR.M.VELUSAMY SHOP NO.22 GROUND FLOOR
GREATER CHENNAI CORPORATION COMMERCIAL
COMPLEX THIRD AVENUE INDIRA NAGAR ADYAR
CHENNAI 600 020

1 SHENOY NAGAR BREWERY SALAI ... PETITIONER in WP No.24208/17
VIYABARIGAL NALA SANGAM REGN. NO. 102/2011
BY ITS SECRETARY BREWERY PROJECT NO.2
SHENOY NAGAR CHENNAI 30

1 RMKV SILKS PVT LTD ... PETITIONER in WP No.15876/17
REP BY MANAGING DIRECTOR MR.K.SIVAKUMAR S/O.
MR.KUMARASWAMY NOS.125-127 USMAN ROAD T.
NAGAR CHENNAI-600 017

1 FATHIMA HUSSAIN ... PETITIONER IN WP.26722/17
W/O.M.P.TALMUJ HUSSAIN
SHOP NO.17, INDRA NAGAR, ADYAR,
CHENNAI 600 020.

1 BAMINI NARAYANAN ... PETITIONER in WP No.28143 to 28149/17

2 ARUNDHATHI MENON

1 MR.S.KHADAR IBRAHIM ... PETITIONER in WP No.14979/17
SHOP NO.07G GREATER CHENNAI CORPORATION
COMMERCIAL COMPLEX INDIRA NAGAR THIRD
AVENUE CHENNAI- 600 020.

1 M.J.MOULALANA JAMAL ... PETITIONER in WP No.15758/17
S/O.JAMALUDIN SHOP NO.3 GROUND FLOOR
GREATER CHENNAI CORPORATION COMMERCIAL
COMPLEX THIRD AVENUE INDIRA NAGAR ADYAR
CHENNAI 20

1 S.NAGESHWAR RAO ... PETITIONER in WP No.17412/17

1 K.K.P.MUTHIAYA ... PETITIONER in WP No.17413/17

1 N.RAJENDRAN ... PETITIONER in WP No.17414/17

1 N.RAJENDRAN ... PETITIONER in WP No.17415/17
S/O.D.NATARAJAN NO.185 THIRUVOTTIYUR HIGH
ROAD HOSPITAL COMMERCIAL COMPLEX
TIRUVOTTIYUR CHENNAI-600 019

1 A.SIVAGNANA VADIVELU ... PETITIONER in WP No.17416/17
S/O.K.P.ARUMUGAM NO.185 THIRUVOTTIYUR HIGH
ROAD HOSPITAL COMMERCIAL COMPLEX
TIRUVOTTIYUR CHENNAI-600 019

1 V.RAMAMURTHY ... PETITIONER in WP No.17566/17
S/O. VENGAIYA NO.185 TIRUVOTTIYUR HIGH
ROAD HOSPITAL COMMERCIAL COMPLEX
TIRUVOTTIYUR CHENNAI- 600 019.

1 S.SATHIYANARAYANAN ... PETITIONER in WP No.17567/17
S/O. SUBBAIAH NO.185 TIRUVOTTIYUR HIGH

ROAD HOSPITAL COMMERCIAL COMPLEX
TIRUVOTTIYUR CHENNAI- 600 019.

1 A.KANIMOZHI ... PETITIONER in WP No.17568/17

1 R.DEVADOSS ... PETITIONER in WP No.17569 & 17570/17
S/O. RAGAVA REDDY NO.185 TIRUVOTTIYUR HIGH
ROAD HOSPITAL COMMERCIAL COMPLEX
TIRUVOTTIYUR CHENNAI- 600 019.

Vs.

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
2. The Asst. Revenue Officer,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.
3. The Zonal Officer,
Zone - IX,
Chennai Corporation,
No.1, Lake Area, 4th Cross Street,
Nungambakkam,
Chennai- 600 034. ... Respondents IN WP.27462 TO 27464/17

1. STATE OF TAMIL NADU
REP BY THE SECRETARY
MUNICIPAL ADMINISTRATION & WATER SUPPLY DEPARTMENT,
FORT ST. GEORGE, CHENNAI
... 1ST RESPONDENT IN WP.24208, 17412 TO 17416
AND 17566 TO 17570/17

2. THE COMMISSIONER
GREATER CHENNAI CORPORATION
RIPPON BUILDING CHENNAI 9 ... 1st Respondent in wp.27462 to
27464, 19633 to 19636, 26516,
15876, 28143 to 28149, 14979 & 15758/17 and
2nd Respondent in WP.24208, 17412
to 17416, 17566 to 17570/17

3. THE ZONAL OFFICER,
ZONE 13 GREATER CHENNAI CORPORATION,
NO.115, DR. MUTHULAKSHMI, SALAI, ADYAR,
CHENNAI 20 ... 2RD RESPONDENT IN WP.19633 TO 19636,
26516 & 15758/17

4. THE ASST. COMMISSIONER
ZONE 8, CHENNAI CORPORATION 36b
PULLA AVENUE CHENNAI-40. ... 3RD RESPONDENT IN WP.24208/17
5. THE ZONAL OFFICER,
NONE-10 GREATER CHENNAI CORPORATION
NO.117, N.S.K. SALAI,
KODAMBAKKAM, CHENNAI 24. ... 2ND RESPONDENT IN WP.15876/17
6. THE ASSISTANT REVENUE OFFICER,
ZONE-10 GREATER CHENNAI CORPORATION
KODAMBAKKAM, CHENNAI 24. ... 3RD RESPONDENT IN WP.15876/17
7. THE ZONAL OFFICER,
ZONE IX, CORPORATION OF CHENNAI.
NO.1 LAKE AREA 4TH CRPS STREET.
NUNGAMBAKKAM, CHENNAI 34. ... 3RD RESPONDENT IN WP.27462 TO 27464
& 28143 TO 28149/17
8. THE ASSISTANT REVENUE OFFICER,
ZONAL OFFICE-1, GREATER CHENNAI,
CORPORATION NO.945, THIRUVOTTIYUR HIGH ROAD,
TIRUVOTTIYUR, CHENNAI 19. ... 3RD RESPONDENT IN WP.17412 TO 17416,
and 14566 TO 17570/17
9. THE ASST. REVENUE OFFICER,
CORPORATION OF CHENNAI RIPON BUILDING,
CHENNAI 3 ... 2nd RESPONDENT IN WP.27462 TO 27464
& 28143 TO 28149/17
- 10 THE ASSISTANT REVENUE OFFICER,
ZONE B, GREATER CHENNAI CORPORATION,
CHENNAI 20. ... 3RD RESPONDENT IN WP.14979 & 15758/17

WP No.27462 TO 27464 of 2017
Petition Under Article 226 of the Constitution of India to
issue writ of certiorarified mandamus calling for the records of
the Respondents as contained in the demand notice dated
23.06.2017 bearing No.Ma.AA.9 Va. Thu. Naa. Kaa. No.Aar3/
138,139 & 140/ 2017 issued by the 3rd Respondent pertaining to
Shop No.8,9 & 10 First Floor, Door NO.29, C.P.Ramasamy Road,
Alwarpet, Chennai-600 018 and quash the same and consequently
direct the Respondents to charge only the fair rent in
accordance with law

WP No.19633 to 19636 of 2017
calling upon the records and quash the letter dated 02.05.2017
bearing Ref.No.Ma.A.13.Na.Ka.No.R3/0065/2017 issued by the

second Respondent herein and subsequently directt the First & Second Respondents to consider the representation of the petitioner dated 11.05.2017

WP No.26722 & 26516 of 2017
calling for the records and quash the letter dated 02.05.2017 bearing Ref.No.Ma. A.13.Na.Ka.No.R.3/ 0065/ 2017 issued by the Second Respondent herein and subsequently direct the First & Second Respondents to renew the Lease in favour of the Petitioner in respect of Shop No.17 & 22, Ground Floor, Greater Chennai Corporation, Commercial Complex, 3rd Avenue, Indira Nagar, Adyar, Chennai 600 020 for the period of nine years by fixing a reasonable rent over and above the existing rent

WP No.24208 of 2017
calling for the records of the 2nd respondent relating to Resolution No.143 of 2017 dated 16.03.2017 passed by the 3rd respondent and quash S.No. 6 relating to the petitioner and the consequential orders dated 09.06.2017 and 07.07.2017 and direct the respondents to re-fix the lease amount

WP No.15876 of 2017
calling upon the records of the 2nd respondent and quash the letter Z.O.10.R.D Na.Ka. No.R4/ 169/ 2017 dated 03.2017, signed on 25.03.2017 by quashing the same and consequently forbearing the 2nd respondent from initiating any coercive action to demand / collect the revised rent on the basis of the present demand

WP No.28143 to 28149 of 2017
calling for the records of the respondents as contained in the demand notice dated 23.6.2017 bearing No.Ma.AA.9 Va.Thu. Naa. Kaa. NO.Aar3/196, 197, 198, 199, 200, 201 & 202/ 2017 issued by the 3rd respondent pertaining to Shop No.6,7,8,9,10,11 & 12, 2nd Floor, Door No.77, C.P.Ramsamy Road, Alwarpet, Chennai 600 018 and quash the same and consequently direct the respondents to charge only the fair rent

WP No.14979 of 2017
calling upon the records and quash the Letter dated 02.05.2017 bearing Ref.No.Ma.Aa.13, Na.Ka.R3 /0065 /2017 issued by the second respondent herein ad subsequently direct the second respondent to consider the representation of the petitioner dated 11.05.2017

WP No.15758 of 2017
calling upon the records and quash the Letter dated 2.5.2017 bearing Ma. Aa. 13 Na. Ka. No. R.3/0065/2017 issued by the 2nd respondent herein and direct the 1st respondent to consider the representation of the petitioner dated 26.5.2017

WP No.17412 to 17413, 17515, 17516, 17566 to 17570 of 2017
Calling for the records pertaining to the impugned Notice issued
by the third respondent in Ma.Aa.1/ Va.Thu. Na.Ka. No.R1/
00205/2017 dated 15.3.2017 in respect of Shop
Nos.17,27,21,7,5,16,12,25 & 24 at Hospital Commercial Complex at
No.185, Thiruvottiyur High Road, Tiruvottiyur, Chennai-600 019
and quash the same

WP No.17414 of 2017
Calling for the records pertaining to the impugned Notice issued
by the third respondent in Ma.Aa.1/ Va.Thu. Na.Ka. No.R1/
00205/2017 dated 15.3.2017 in respect of Shop No.6 at No.936,
Thiruvottiyur High Road, Tiruvottiyur, Chennai-600 019 and quash
the same

FOR PETITIONER : MR.A.R. KARUNAKARAN IN WP.27462
TO 27464/17

MR.M.AREVIND SUBRAMANIAM IN
WP.19633 TO 19636,26722, 26516,
14979, 15758/17

MR.T.SEZHION
IN WP.24208/17

MR.R.MOHAN, IN WP.15876/17

MR.A.K.KARUNAKARON IN
WP.28143 TO 28149/17

M/S.M.MURALI IN WP.17412 TO
17416 & 17566 TO 17570/17

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FOR RESPONDENTS

: MR.MONISHANKAR, AAG ASSISTED BY
MR.T.C.GOPALAKRISHNAN, SENIOR
COUNSEL FOR RR1 TO R3 IN WP.
27462 TO 27464, 24208, 15876,
14979 & 15758/17

FOR RR1 & R2 IN WP.19633 TO
19636,26516, 28143 TO 28149 &
26722/17

FOR RR2 & R3 IN WP.17412 TO
17416 & 17566 TO 17570/17

MR.R.VENKATESH, GOVERNMENT
ADVOCATE FOR R1 IN WP.17412 TO
17416 & 17566 TO 17570/17

* * * * *
C O M M O N O R D E R

As the issue involved in all these Writ Petitions is one and the same, these Writ Petitions are taken up for disposal by a common order.

2. Petitioners have come up with the present Writ Petitions seeking to quash the impugned Demand Notice issued by the respondent/Corporation pertaining to the Shops in question and for a consequential direction to the respondents to charge only the fair rent in accordance with law.

3. According to the petitioners, they are lessees of the shops owned by the respondent Corporation, after entering into a lease agreement with them, based on which, the lease amount was fixed and it was revised once in every three years. It is submitted that they have been promptly paying the rent to the respondent Corporation without fail and there are no arrears of rent. It is their grievance that the respondent Corporation has exorbitantly increased the monthly rent of the shops without comparing the same with the market value.

4. Learned counsel for the petitioners contended that the respondent Corporation ought to have adopted a humane and practical approach while fixing the revised rent, and re-fixing it at such exorbitant rate is not reasonable. It is his further contention that the guideline value of the properties had been

reduced to 33% by the State and fixing it on the higher side, more particularly, asking the petitioners to pay the rent at such unreasonable rates, needs to be interfered with.

5. In reply, learned counsel appearing for the respondent Corporation submitted that the petitioners have been periodically paying the revised rent once in every three years as per G.O.M.S.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007. According to him, if the petitioners are not willing to pay the revised rent as demanded, it is open to them to go for a public auction. Referring to clauses 4(ii) and 4(iii) of the said Government Order, he further submitted that an opportunity has to be given to the petitioners, once the revised rent is fixed and that if the petitioners do not accept the same, it is open to them to go ahead with the public auction.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. The sum and substance of the issue in question is as to whether the Corporation is entitled to fix the rent on a higher side, be it lease/rent and demand the amount from the petitioners, as calculated by them.

8. It is not in dispute that the petitioners are in occupation of the premises in question as lessees and paying the rent regularly and that it was revised periodically once in every three years as per the said Government Order.

9. In a similar circumstance, a Division Bench of this Court in the case of P.V.Subramanian v. Secretary to Government, 2014 (5) MLJ 129, has held that licence can be converted into one of lease and that the object of letting out the shop is to collect more revenue for the Corporation/Municipality and that the extension granted to the existing licensees is only by way of concession and that the revision is made based on the prevailing market value and not otherwise. For better understanding, relevant portion of the said decision reads as under:

"20. The facts narrated above would clearly indicate that the petitioners have been given only a licence to run the shops. Just because the word "lease" has been mentioned, a licence cannot ipso facto be converted into a lease. Admittedly, the licence issued has a fixed terms. Therefore,

the petitioners do not have a legal or a vested right to continue in occupation for ever. There is no doubt that the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961, does not apply to the case on hand. The petitioners can very well participate in the proposed auction. In other words, they cannot claim the right of a statutory tenant.

21. The object of letting out the shops is to collect more revenue for the respondent-Municipality, which is meant to be used for welfare measures. The Government Orders, as narrated above, are very specific about the purpose of auction followed by lease/licence. Since the transactions are commercial in nature, the petitioners, being licensees, cannot insist that the rent, which as they think, just and proper alone is liable to be paid. Since the licence is to be granted by the respondent-Municipality, while making offer, the said authority can impose its own terms in accordance with law. While accepting the said offer, the petitioners cannot insist that the condition attached therein cannot be imposed. A perusal of the Government Orders referred to above as well as the orders impugned make it clear that the rent has been fixed based upon the prevailing market value and not otherwise. What has been given by way of extension to an existing licensee was only a concession. The subsequent extension has been made during the pendency of the writ petitions. The said decision was made in view of the undertaking given by the licensees. An undertaking was given in connection with the payment as well as on the withdrawal of the writ petitions. The Government orders also state that in the event of non compliance of the conditions imposed including the payment of appropriate rent, a licensee is liable to be removed.

22. The resolution has been passed after making detailed discussion and it was also passed as a consequence of the earlier order dated 14.12.2012 by which rent was fixed. Since the said rent so fixed was not paid, the respondent- Municipality was made to pass the impugned resolution. Therefore, it cannot

be said that the impugned resolution has been unilaterally passed and as such, the said decision is in accordance with the Government Orders passed, which confer the power on the respondent- Municipality to take action towards the eviction from the shops in the event of non payment of rent payable. The extraction of the related paragraphs of the resolution would clearly show that relevant materials have been taken into consideration while passing the same. The respondent-Municipality has got its own duty and obligation to perform. Appointments will have to be made to the public office and salaries will have to be paid. Money will have to be spent towards the welfare measures. The assessment made also indicates that the proposed auction would bring more money. The best way to get the maximum revenue is by way of public auction. This will also create a level playing field enabling others to participate along with the petitioners/licensees. Therefore, we do not find any arbitrariness in the action of the respondent-Municipality. The reliance made by the petitioners on the communication dated 12.03.2009 cannot be accepted since it cannot overreach the Government Orders which speak about removal when conditions are not complied with. The fact that the Commissioner of Municipal Administration directed the respondent-Municipality to fix the market rent as the rent payable based upon the Government Orders which in turn was complied with would also show that there is no quarrel with the position that the market rent shall be the basis for the fixation of the rent payable by the licensees. In any case, the petitioners, being the defaulters, cannot contend that they should be allowed to continue forever. As the orders impugned have been passed by taking into consideration of the relevant materials, we do not find any room for interference."

10. From the above discussion and in the light of the decision cited supra, it is seen that the respondent Corporation has fixed the rent with all due considerations. Reduction of 33% in the guideline value would not be a valid reason for the

petitioners to interfere with the decision of the respondent Corporation. The Government might have revised the guideline value to 1/3 (33%) only to safeguard their own interest to avoid paying compensation to the landowners for the lands acquired by them, as they need to pay hefty compensation to the landowners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and not otherwise.

11. Thus, this Court finds no merit in these Writ Petitions, which are therefore, dismissed accordingly. It is upto the petitioners to accept the offer given by the respondent Corporation, since they have been in occupation of the premises for several years, failing which, the respondent Corporation shall go ahead with the auction. In case, the petitioners do not give consent for the payment of the enhanced amount within one month, it is open to the respondent Corporation to go ahead with the auction, and till such time the auction is announced, the petitioners may continue to function in the same place. As there is a possibility that the petitioners may challenge the auction notice and continue to function in the same place on account of any litigation or interim order, in order to avoid such circumstances, this Court holds that once the auction notification is published, the petitioners are deemed to have vacated the tenements and the respondents can enter the place with the help of police force, if required.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. THE SECRETARY
STATE OF TAMIL NADU
MUNICIPAL ADMINISTRATION & WATER SUPPLY DEPARTMENT,
FORT ST. GEORGE, CHENNAI

2. THE COMMISSIONER
GREATER CHENNAI CORPORATION
RIPPON BUILDING CHENNAI 9

3. THE ZONAL OFFICER,
ZONE 13 GREATER CHENNAI CORPORATION,
NO.115, DR. MUTHULAKSHMI, SALAI, ADYAR,
CHENNAI 20

4. THE ASST. COMMISSIONER
ZONE 8, CHENNAI CORPORATION 36b
PULLA AVENUE CHENNAI-40.

5. THE ZONAL OFFICER,
ZONE-10 GREATER CHENNAI CORPORATION
NO.117, N.S.K. SALAI,
KODAMBAKKAM, CHENNAI 24.

6. THE ASSISTANT REVENUE OFFICER,
ZONE-10 GREATER CHENNAI CORPORATION
KODAMBAKKAM, CHENNAI 24.

7. THE ZONAL OFFICER,
ZONE IX, CORPORATION OF CHENNAI.
NO.1 LAKE AREA 4TH CRPSS STREET.
NUNGAMBAKKAM, CHENNAI 34.

8. THE ASSISTANT REVENUE OFFICER,
ZONAL OFFICE-1, GREATER CHENNAI,
CORPORATION NO.945, THIRUVOTTIYUR HIGH ROAD,
TIRUVOTTIYUR, CHENNAI 19.

9. THE ASST. REVENUE OFFICER,
CORPORATION OF CHENNAI RIPON BUILDING,
CHENNAI 3

10 THE ASSISTANT REVENUE OFFICER,
ZONE B, GREATER CHENNAI CORPORATION,
CHENNAI 20.

+1cc to Mr.R.MOHAN, Advocate, S.R.No.82308

+3cc to Mr.M.ARAVIND SUBRAMANIAM, Advocate, S.R.No.83056

+1cc to Mr.A.R.KARUNAKARAN Advocate, S.R.No.82757

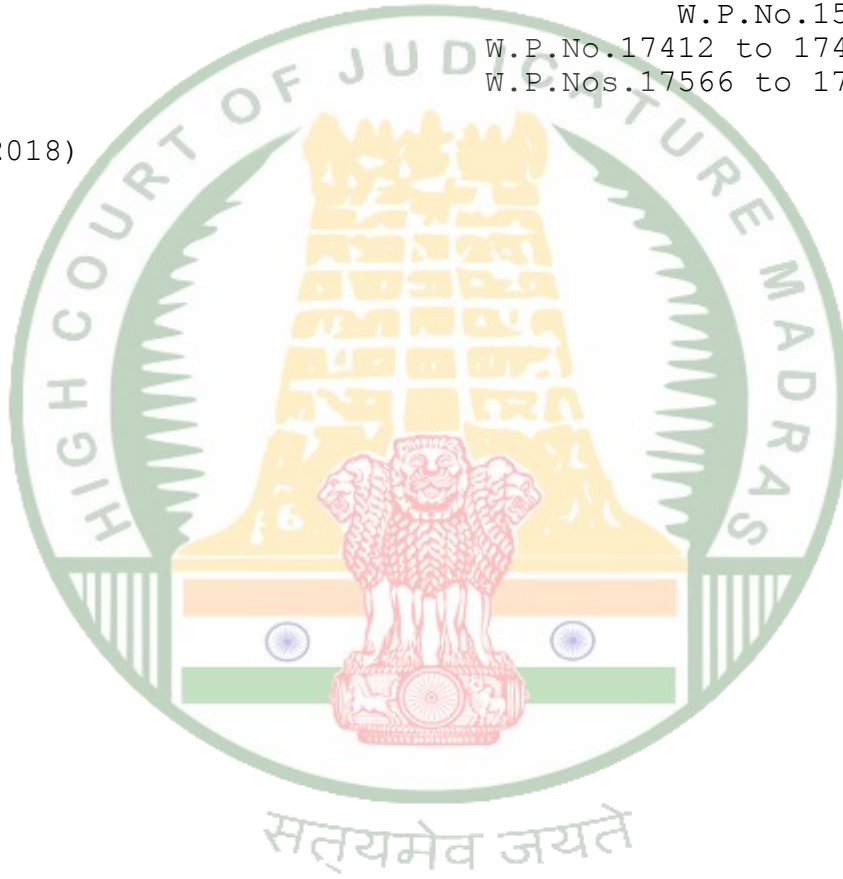
+1cc to Mr.R.MEENAL Advocate, S.R.No. 82301

+1cc to the Government Pleader, S.R.No. 83274, 83267 & 83292

+1cc to Mr.A.R.KARUNAKARAN Advocate, S.R.No.82756
(15/03/2018)

Common Order in
W.P.Nos.27462 to 27464 of 2017
W.P.Nos.19633 to 19636 of 2017
W.P.No.26722 of 2017
W.P.No.26516 of 2017,
W.P.No.24208 of 2017
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W.P.Nos.17566 to 17570 of 2017

GMR (CO)
TR (13/02/2018)



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