



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 13.10.2017

Orders Pronounced On: 26.10.2017

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THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD) No.17079 of 2017
and
W.M.P(MD) .Nos.13667 & 14120 of 2017

Dr.M.Kanmani

.. Petitioner

Vs.

1.The Commissioner,
Madurai Corporation, Madurai.

2.The President,
Madurai District Central Co-operative Society Ltd,
Madurai. .. Respondents

Prayer: Writ Petition is filed Under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the First Respondent to stall the Second Respondent from making any kind of encroachment much less a compound wall in the 30 feet road situated as the Eastern boundary of Plot No.76A formed by the Second Respondent as Layout of House sites for the Alagappan Building Society Ltd., Kalai Nagar, in Survey No.52 situated at Anaiyur Village, Madurai North Taluk, Madurai District by considering the Petitioner's representation dated 03.09.2017.

For Petitioner : Mr.M.Thirunavukkarasu
for

Mr.D.Venkatesh

For R1 : Mr.R.Murali
Standing Counsel

For R2 : Mr.D.Shanmugarajasethupathi

O R D E R

[Order of the Court was made by **M.VENUGOPAL, J.**]

The Petitioner has filed the present Writ Petitioner praying for passing of an order by this Court in directing the First Respondent to stall the Second Respondent from making any kind of encroachment much less a compound wall in the 30 feet road



situated as the Eastern boundary of Plot No.76A formed by the Second Respondent as Layout of House sites for the Alagappan Building Society Ltd., Kalai Nagar, in Survey No.52 situated at Anaiyur Village, Madurai North Taluk, Madurai District by considering his representation, dated 03.09.2017.

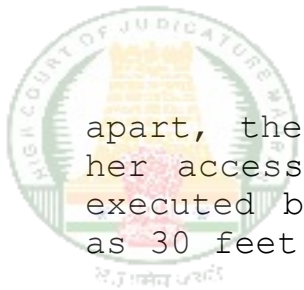
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2. According to the Petitioner, the Second Respondent/the President, Madurai District Central Co-operative Society Limited, Madurai, is having lands in survey No.52 situated at Anaiyur Village, Madurai Taluk, Madurai District. As a matter of fact, the Second Respondent/the President, Madurai District Central Co-operative Society Limited, Madurai, with a view to provide house sites for its members, had created an unapproved layout at Kalainagar. The then Assistant Secretary one Vishwanathan, S/o.Chidambaram Pillai, by means of a registered sale deed, dated 26.04.1974 and also being a member in the office of the Second Respondent/Society, purchased the Plot No.76A to an extent of 5277 square feet from the Second Respondent. Similarly, the Plot No.44 situated on the northern side of the Plot No.76A was purchased by one K.V.Sundararaman, S/o.Vishwanathan as a member by means of sale deed, dated 17.08.1962. Indeed, in the said sale deed, the Eastern boundary was shown as road. However, for Plot No.76A, the Eastern boundary was shown as MDDC Colony.

3. The stand of the Petitioner is that after purchase of house site from the Second Respondent/Society, the said Vishwanathan constructed a house on the ground floor in Plot No.76A after obtaining necessary permission from the local body viz., the Anaiyur Village Panchayat. In fact, on 10.02.1992, the building plan permission was obtained from the Anaiyur Town Panchayat for making additional construction of first floor. Now, the layout area got merged with the First Respondent/Madurai Corporation at the time of extension of the Corporation limit.

4. The version of the Petitioner is that after the death of Vishwanathan, his son Natarajan derived title over the house property situated in Plot No.76A by means of a registered Release Deed, dated 16.10.2009, executed by the wife and the Daughter of the said Vishwanathan. The Petitioner, on 09.11.2012, purchased the Plot No.76A together with the building of ground and first floor, for a sum of Rs.52 lakhs. Ever since the date of purchase, she is in possession and enjoyment of the said house property and paying house tax regularly and also obtained house site patta in her favour from the Revenue Department.

5. The Learned Counsel for the Petitioner submits that the Eastern boundary of Petitioner's property is a 30 feet road provided by the Second Respondent and while getting building permission from the Second Respondent, it was shown by Petitioner's vendor as a road. Furthermore, it is represented that the Petitioner's predecessor used the said 30 feet road for access after her purchase. That



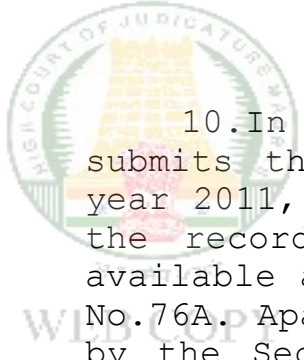
apart, the Petitioner continues to use the same 30 feet road for her access and in the sale deed of her neighbour for Plot No.44 executed by the Second Respondent, the Eastern bounder was shown as 30 feet road.

6. The Learned Counsel for the Petitioner proceeds to point out that the Second Respondent/Society is having a vacant site on the Eastern side of 30 feet road and in fact, the Second Respondent tried to put up a compound wall in front of Petitioner's house without providing any gap from the main gate provided by the Petitioner on her house compound wall. Moreover, it is the plea of the Petitioner that on 01.09.2017, the Second Respondent/Society engaged persons to start the initial work of excavating the earth for construction of compound wall, that too, by encroaching 30 feet road shown in the layout.

7. At this juncture, the Learned Counsel for the Petitioner contends that despite the objection of the Petitioner that she has no way even to come out from her house, if the compound wall is constructed leaving no place, the Second Respondent/Society is progressing in the initial work for making compound wall. Therefore, the Petitioner had requested the Second Respondent/Society to erect compound wall leaving the 30 feet road, but the same was not accepted. The Second Respondent/Society further stated that there is no 30 feet road as claimed by the Petitioner and the said portion, actually belongs to the Second Respondent and therefore, it has every right to fence the same.

8. Continuing further, the Learned Counsel for the Petitioner submits that the Petitioner met the Second Respondent/Society in person and requested them to construct the compound wall leaving the 30 feet road, but the result was not fruitful. Hence, according to the Learned Counsel for the Petitioner, the Petitioner made a representation before the First Respondent on 03.09.2017 narrating the illegal attitude of the Second Respondent in attempting to encroach the 30 feet road situated on the Eastern side of her house. Besides this, the Petitioner had sought for the help of the First Respondent/Commissioner, Madurai Corporation, to stall the Second Respondent/Society from encroaching the 30 feet road situated on the Eastern side of her house property. Since the Second Respondent/Society is proceeding to encroach the 30 feet road situated on the Eastern side of Petitioner's house and thereby trying to obstruct her even from coming out from Petitioner house, the Petitioner has filed the present Writ Petition before this Court.

9. The Learned Counsel for the Petitioner brings it to the notice of this Court that the present Office Bearers of the Second Respondent/Society by engaging daily wages workers, has excavated the earth in front of Petitioner's house and proceeding further on day to day basis for erecting compound wall in the 30 feet road situated as the Eastern side boundary for the Petitioner's Plot.



10. In response, the Learned counsel for the First Respondent submits that 'Anaiyur' was originally a Municipality and in the year 2011, it was merged with Madurai Corporation. Further, as per the records of Madurai Corporation, there is no 30 feet road available as alleged by the Petitioner on the Eastern side of Plot No.76A. Apart from that, the alleged Compound Wall was constructed by the Second Respondent/Society with its own fund to safeguard its own property. In reality, the First Respondent/Corporation is no way connected with the construction of compound wall.

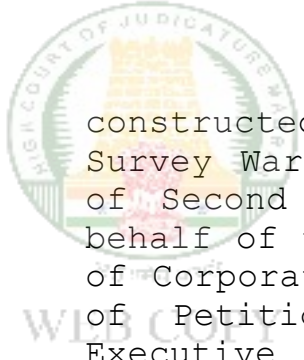
11. The Learned Counsel for the First Respondent contends that on field verification and as well as from the documents produced by the Second Respondent/Society, it is evident that the Petitioner's Plot no.76A was provided with a 10 feet pathway to reach the Southern side street of the layout of Kalainagar. In this connection, the Learned Counsel for the First Respondent/Corporation, points out that the third main road, which is running East to West on the Southern side of property is intact and that the Petitioner instead of using the said 10 feet pathway, now claims a right over 30 feet pathway on the Eastern side of her Plot No.76A.

12. The Learned Counsel for the First Respondent/Corporation, takes a categorical stand that the First Respondent/Madurai Corporation never maintained any road including 30 feet road, as alleged by the Petitioner on the Eastern side of Plot No.76A and as per the Town Survey Records of the Corporation, the place, where the compound wall is now constructed, comes under Madurai Corporation Zone I, Ward No.3, Survey Ward No.XV, Block No.4, T.S.No.158 and it stands in the name of Second Respondent/Society.

13. The Learned Counsel for the First Respondent proceeds to add that the entire layout was promoted by the Second Respondent/Co-operative Society and that the Society is now constructing the compound wall on its own property and the dispute now raised by the Petitioner is the private dispute between the Petitioner and Second Respondent. Therefore, the present Writ Petition filed by the Petitioner is not maintainable because of the reason that the Petitioner is raising disputed facts.

14. Moreover, it is the plea of the First Respondent that as per the 'Building Rules' of the First Respondent/Corporation, there is no provision available requiring permission to construct a compound wall.

15. The Learned Counsel for the First Respondent/Corporation refers to the report filed by the First Respondent/Madurai Corporation before this Court to the effect that the Corporation Surveyor had surveyed the disputed place viz., the place, where the Compound Wall is constructed on 12.09.2017 and as per the survey report, where the compound wall is now



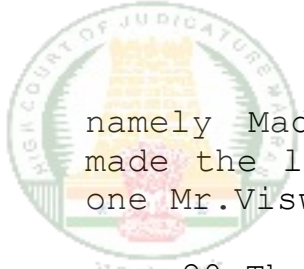
constructed, comes under Madurai Corporation Zone I, Ward No.3, Survey Ward No.XV, Block No.4, T.S.No.158, it stands in the name of Second Respondent/Society. Furthermore, it is represented on behalf of the First Respondent/Corporation that as per the records of Corporation, no 30' feet road is available on the Eastern side of Petitioner's property. Even on 15.09.2017, the Assistant Executive Engineer (Planning) and Executive Engineer (Planning) once again surveyed the disputed place and confirmed that there is no 30 feet road available, as per records of Madurai Corporation.

16.Conversely, it is the contention of the Learned Counsel for the Second Respondent that the Writ Petition filed by the Petitioner against the Second Respondent/Society is per se not maintainable, because of the fact that a Co-operative Society carrying the banking business cannot be termed as either State or instrumentally of the State within the meaning of Article 226 of the Constitution of India and to lend support to this contention, a reliance was placed on the decision of this Court between **Marappan Vs. Deputy Registrar of Co-operative Societies, reported in 2006(4) CTC 689.**

17.The Learned Counsel for the Second Respondent contends that the bank had purchased the land in Survey No.223 (New Survey No.158) measuring an extent of 3 Acres 9 cents from Thiruvalluvar Co-operative Weavers Society, Madurai, by means of registered sale deed, dated 15.09.1960 and that the property is situated in Tallakulam Village, Madurai Taluk, Madurai District. Later, the Madurai District Central Co-operative Bank had made the layout for the purpose of constructing dwelling houses to the employees of the Bank known as MDCC Bank Colony and in fact, the Bank has proposed to earmark 30 feet road on the Western end of the property and that the afore said road earmarked, is not public road. Per contra, it is earmarked for the use of the people residing within the MDCC Bank Colony.

18.The Learned Counsel for the Second Respondent submits that the Madurai City Co-operative Housing Society (Formerly Known as Alagappan Co-operative Building Society) has made the layout in Survey No.52 for the members of the above Society and the layout was named as Kalai Nagar Colony. Further, on the Western side of the property of the MDCC Bank, there are house Plots made by the afore stated Society and the same are having approach road within its layout.

19.The Learned Counsel for the Second Respondent pertinently points out that the Plot No.76A (belongs to the Petitioner) and 76B were not there in the original layout and the total land consisting of 76A and 76B were shown as vacant land without earmarking any house sites and that the Petitioner now claims to be owner of the Plot No.76A and it appears that the then Secretary



namely Madurai City Co-operative Housing Society had illegally made the layout as Plot Nos.76A & 76B and sold the Plot No.76A to one Mr.Viswanathan, the Petitioner's vendor.

20.The Learned Counsel for the Second Respondent takes a plea that the MDCC Bank had put up a barbed wire fencing during November 1978 and the fencing was also covering the above 30 feet road earmarked by the Bank. Further, the Petitioner's vendor Viswanathan purchasing the house Plot No.76A, had removed the fencing and encroached the road. In fact, the MDCC Bank on 30.06.1990, had issued a notice to the said Viswanathan for having removed the fencing and trespassing into the property of the MDCC Bank and the said Viswanathan had submitted an explanation stating that the then Special Officer of the Bank had orally agreed to provide approach road to the resident of the Kalai Nagar and hence, the Petitioner's vendor had admitted that the afore stated 30 feet road is not a public road and the same belongs to MDCC Bank.

21.The Learned Counsel for the Second Respondent contends that over the period of time the dwelling houses constructed in the property of the Bank were damaged and some of the houses are under dilapidated condition and since some of the dwelling houses were not occupied due to the structural condition, some antisocial elements trespassed into the property during night time and doing various antisocial activities. Under such circumstances, the elected Management Board of the Bank had decided to construct a compound wall around the property including the above 30 feet road earmarked by the Bank, in order to protect the property. At this juncture, the Petitioner has filed the present Writ Petition, which is a clear abuse of process of this Court.

22.The Learned Counsel for the Second Respondent takes a categorical plea that the MDCC Bank is no way connected with the layout, in which, the house Plot of the Petitioner is situated and the Petitioner has filed a misleading affidavit before this Court, as if the Second Respondent has made layout in Kalai Nagar and had laid 30 feet road as a part of layout and later, the present officers of the MDCC Bank wanted to encroach upon the afore said 30 feet road.

23.The Learned Counsel for the Second Respondent contends that the Plot No.76A was not found place in the original layout and the afore stated land was earmarked for some other purpose and later, the Office Bearers of the Society had illegally divided the land as Plot Nos.76A and 76B. It is also represented on behalf of the Second Respondent that the afore said Plot No.76A was sold to Viswanathan, from whom the Petitioner had purchased the property and while laying out Plot Nos.76A and 76B, ten feet road was earmarked together with the Plot No.76B for having accessed to the Plot No.76A.



24. At this stage, the Learned Counsel for the Second Respondent submits that if at all, the Petitioner is having 10 feet width road on the Eastern side of the Plot No.76B to have access to the main road, the afore said 10 feet road was encroached by the owner of the Plot No.76B and that instead of approaching the owner of Plot No.76B and getting the afore said 10 feet road, the Petitioner has approached this Court as if the Second Respondent is making an endeavour to encroach upon its own road. In this connection, the Learned Counsel for the Second Respondent adverts to the fact that in the Sale Deed, dated 09.11.2012, executed by the legal heirs of Viswanathan to and in favour of the Petitioner. In the four boundaries of the schedule of property, it is mentioned that MDCC Bank Colony is situated on the Eastern side and further, it is not mentioned in the four boundaries that the alleged 30 feet road is on the Eastern side of her house Plot and as such, the Petitioner's own document clearly spells out that the MDCC Bank Colony is situated on the Eastern side of her Plot, not the 30 feet road.

25. The Learned Counsel for the Second Respondent contends that the Petitioner has placed reliance on the sale deed dated 26.04.1974 relating to one Sundararaman and the Petitioner's claim is that the four boundaries of the said sale deed, shows road on the Eastern side. But in fact, the afore said sale deed dated 26.04.1974 pertains to Plot No.B-44 and it is not related to Plot No.44, as averred by the Petitioner.

26. By way of Reply, the Learned counsel for the Petitioner submits that in respect of a statutory violation, the present Writ Petition is very much maintainable before this Court. The Learned counsel for the Petitioner takes a strenuous stand that if the compound wall is put up, then the Petitioner's ingress and egress will be affected.

27. At this juncture, this Court refers to Condition No.(vi) of the sale deed dated 26.04.1974, executed by the President of the Madurai City Co-operative Housing Society to and in favour of C.Viswanathan, which runs as under:-

"That the identity of the property sold with that comprised in the schedule hereunder written shall be admitted by the member.

The schedule referred to:

Plot No.C76.A in Anaiyur Village, Madurai Taluk, Madurai District within the jurisdiction of the Joint Registrar of Assurance Madurai IV.

In Survey No.52

The east by

The North by

The South by

and bounded on

M.D.C.C. Bank Colony

Plot No.76

Plot Nos.45 & 44

Plot No.76B



Measuring 5277 square feet or 12.45 cents in extent. The compound walls on the East, West, North and South have to be constructed by the member at his own cost."

28.It comes to be known that C.Viswanathan, by means of sale deed, dated 09.11.2012, had sold the extent of 5277 sq.ft i.e. 12.45 cents together with the R.C.C. construction; the house building and the first floor house etc., for a sum of Rs.52 Lakhs. In the schedule of the afore said sale deed, dated 09.11.2012, the E.B. connection Nos.106-021-318 & 106-021-319, wiring, meter and the deposit amount, Corporation drinking water connection No.1189 and its deposit amount, stair cases, compound walls, Latrine, Bathroom, Bore Well, pipe line, motor etc., are mentioned.

29.It is to be noted that Section 236 of the Madurai City Municipal Corporation Act, 1971, speaks of '**Vesting of public streets and their appurtenances in Corporation**', which runs as follows:-

"All public streets including tunnels, sub-ways and fly-overs in the city not reserved under the control of the Government or the Central Government, with the pavements, stones, and other materials thereof, and all works, materials, implements and other things provided for such streets including all sewers, drains, streetlights, drainage works, tunnels and culverts, whether made at the cost of the municipal fund or otherwise in, alongside, or under any street, whether public or private, and all works, materials, implements and other things appertaining thereto and all trees not being private property growing on public streets or by the side thereof, shall vest in the Corporation.

(2) The Government may, by notification, withdraw any such street, sewer, drain, street light, drainage work, sub-way, fly-over, tunnel, culvert or tree from the control of the Corporation."

30.Section 237 of the Madurai City Municipal Corporation Act, 1971, refers to '**Maintenance and repair of streets**', which reads as follows:-

"The Corporation shall cause the public streets to be maintained and repaired and may make all improvements thereto which are necessary or expedient for the public safety or convenience."

31.Section 239 of the Madurai City Municipal Corporation Act, 1971, enjoins as under:-

"Powers of Commissioner to regulate access to land or building abutting public streets.- Subject to such regulations as may be made by the council, the Commissioner may regulate the means, the manner and extent of access to, and the purpose of use, of any land or building which may abut on any public street."



32. Section 250 of the Madurai City Municipal Corporation Act, 1971, under the caption 'Private Streets' deals with 'Owners obligation to make a street when disposing of lands as building sites'. It cannot be forgotten that the ingredients of Tamil Nadu Town and Country Planning Act, 1971 and the Madurai City Municipal Corporation Act, 1971 are to be read together with and not in derogation to each other. It is to be remembered that the Town Planning Act is meant for the land development and to acquire any land, required for the purposes prescribed under the said Act. However, Section 250 of the Madurai City Municipal Corporation Act, 1971, does not visualise such procedure.

33. It is to be pointed out that Section 255 of the Madurai City Municipal Corporation Act, 1971, enjoins that '**Power to declare private as public street**', and the same is extracted as under:-

"(1) If any street has been levelled, paved, metalled, flagged, channelled, sewered, drained, conserved and lighted under the provisions of section 254, such street shall, on the requisition of a majority of the owners referred to in sub-section (1) of that section, be declared as a public street.

(2) The Commissioner shall publish every declaration made under sub-section (1) in the Madurai District Gazette."

34. Undoubtedly, a citizen has a right to the use of a public street vested in the State as a 'Beneficiary'. However, this right is subject to such reasonable restriction, as the State may choose to impose. As a matter of fact, a public street is meant for the use of general public and the Corporation has a duty to maintain streets and passages for the benefit of the general public. In case of any encroachment, the concerned authority has the requisite power to see that such streets are kept for the purpose, for which, it was intended without permitting the encroachment to defeat the object.

35. It may not be out of place for this Court to make a significant mention that the right of Municipality in respect of the streets and drains are not more 'Easementary Rights'. However, it is a special right of property, earlier created by statute. A public street is vested in the hands of Municipal Authority. Really speaking, the authorities do have the right of sanction user off and charge tax for it.

36. It cannot be brushed aside that the right of 'Easement' is a necessary consequence of the right of ownership of the land. There is no two opinion of a well established proposition that the 'Law of Easements' is an essential adjunct to the 'Property Law'.

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38. It is true that the power to impose 'Easements' is coextensive with the power to transfer and no person can impose an Easement which affects an interest, which he had no power to transfer.

40. However, the Second Respondent while repudiating the claim made by the Petitioner, comes out with a plea that the lay out in Kalai Nagar was made only by the Madurai City Co-operative Housing Society and that the Plot No.76A did not find a place in the original lay out and that the afore said land was earmarked for some other purpose and later Office Bearers of the Society had illegally divided the land as Plot Nos.76A and 76B. Furthermore, the Plot No.76A was sold to Viswanathan from whom, the Petitioner had purchased the property and while laying out the Plot Nos.76A and 76B, ten feet road was earmarked together with the Plot No.76B for having accessed to the Plot No.76A and if at all the Petitioner is having 10 feet with road on the Eastern side of the Plot No.76 to have an access to the main road, the proper course of action for the Petitioner is to approach the owner of Plot No.76 B and to seek necessary relief. Further, it is the case of Alagappan Co-operative Building Society that 30 feet road in question belongs to MDCC Bank and it is not the public road and that the MDCC Bank was requested to provide approach road for the residence of the Petitioner in Kalai Nagar. Moreover, an argument is advanced on behalf of the MDCC Bank Limited, Madurai that the Petitioner's sale deed, dated 09.11.2012 executed by the legal heirs of



Viswanathan to and in favour of the Petitioner, shows that the MDCC Bank Colony is situated on the Eastern side of the Petitioner's Plot and not the 30 feet road.

41. The crystalline stand of the First Respondent/Corporation is that the Corporation never maintained any road including 30 feet road as alleged by the Petitioner on the Eastern side of Plot No.76A and further, as per Town Survey Records of the First Respondent/Corporation, the place, where the compound wall is now constructed comes under the Madurai Corporation Zone I, Ward No.3, Survey Ward No.XV, Block No.4, T.S.No.158 and it do stands in the name of the Second Respondent/Society.

42. In pith and substance, the plea of the First Respondent/Corporation is that the Second Respondent is constructing the compound wall on its own property and therefore, the Writ Petition is not maintainable, because of the private dispute between the Petitioner and the Second Respondent.

43. In the upshot of respective contentions and in view of the divergent stand taken by the respective parties and also this Court considering the facts and circumstances of the present case in an encircling manner, is of the considered view that the disputed question of facts relating to the purported encroachment, much less a compound wall in the 30 feet road situated at the Eastern boundary of Plot No.76A formed by the Second Respondent, as Lay Out of House Sites for the Alagappan Building Society Ltd., Kalai Nagar, in Survey No.52 situated at Anaiyur Village, Madurai North Taluk, Madurai District, cannot be gone into in a summary proceedings under Article 226 of the Constitution of India. Moreover, the controversies hovering around the Writ Petition are mixed 'Questions of Fact and Law', which do require letting in an oral and documentary evidence by examining the relevant witnesses and marking necessary exhibits thereto. As a matter of fact, Article 226 of the Constitution is not available to a person for settling private disputes, for which, remedies are very much available under General Law (both Civil and Criminal). Moreover, the Hon'ble Supreme Court in the decision **BABUBHAI v. NANDAL**, reported in **AIR 1974 SC 2105**, had observed that 'it would be incorrect to incorporate all the proceedings of the Suit into a proceeding under Art.226 of the Constitution of India'.

44. Inasmuch as the Petitioner stakes a claim that if a compound wall is put up, her Ingress and Egress will be affected, this Court in the fitness of things, directs the Petitioner, in the interest of Justice, Fair play and Equity, to approach the competent Civil Forum for redressal of her grievances raising all factual and legal pleas in the subject matter in issue, of course in the manner known to Law and in accordance with Law, if she so



45. With the aforesaid observation(s) and direction(s), the present Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

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/True Copy/

Sub Assistant Registrar

To:

The Commissioner, Madurai Corporation, Madurai.

+1cc to M/S.D.VENKATESH, Advocate SR.No.83827

+1cc to M/S.D.SHANMUGARAJA SETHUPATHI, Advocate SR.No.83686

+1cc to M/S.R.MURALI, Advocate SR.No.84079

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MAS/MR-KKR/SAR2:08.11.2017:12P-5C

Order made in
W.P. (MD) No.17079 of 2017
and
W.M.P (MD) .Nos.13667 & 14120 of 2017
26.10.2017