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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.06.2017

Pronounced on : 23.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBRAMANIAN

Writ Petition (MD) No. 5201 of 2013

and

M.P (MD) Nos. 2 to 5 of 2013

Arulmighu Balagurunathasamy Sametha
Angala Parameswari Amman Thirukoil
Rep by the Hereditary Trustee
Senthamangudi Village,
Hamlet of Ayyampalayam Village,
Musiri Taluk, Trichy District.

... Petitioner

Vs.

1. The Assistant Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Malaivasal, Trichy 1.

2. The Executive Officer,
Arulmighu Sabthareeswarar Thirukoil,
Lalgudi, Trichy District.

3. The Inspector,
Hindu Religious and Charitable Endowments,
Musiri (East) Musiri, Trichy District.

4. The Joint Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Malaivasal, Trichy 1.

5. The Commissioner,
Department of Hindu Religious and
Charitable Endowment
Uthamar Gandhi Road,
Nungambakkam,
Chennai 36.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari, to call for the records relating to the impugned order of the 1st respondent dated 25.03.2013 made in his proceedings Se.Mu.Na.Ka.No.944 of 2013-A5 and quash the same.

<https://hcservices.ecourts.gov.in/hcservices/>

For Petitioner

: Mr.V.Sitharanjandas



For Respondents 1, 3 to 5 :Mr.V.R.Shanmuganathan,
Special Government Pleader.
and
Mr.S.Satheeshkumar, A.G.P.

On request by this Court :Mr.B.Pugalendhi,
Additional Advocate General.
For 2nd Respondent : Mr.G.R.Swaminathan

ORDER

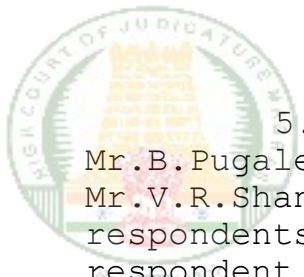
The challenge in this writ petition is to the order of the first respondent dated 25.03.2013 in and by which the first respondent had appointed a Fit Person for Arulmigu Balagurunathasamy Sametha Angala Parameswari Amman Thirukoil, Senthamangudi Village, Musiri Taluk, Trichy District.

2.The order impugned reveals that a Fit Person is appointed for proper management sans any complaint of the temple. It is also stated that renovation works are carried on at a cost of Rs.3 Crores without permission of the Hindu Religious and Charitable Endowments Department. The above said order is challenged in the writ petition primarily on the ground that the petitioner temple has been held to be a temple belonging to a religious denomination of people belonging to the Dharichier Gothram of 24 Manai Telegu Chetty community. It is also claimed that a declaration to that effect has been granted in O.S.No.78 of 1976 by the competent Civil Court namely, II Additional Sub Court, Tiruchirappalli.

3.Originally, the writ petition came to be dismissed by this Court by an order dated 06.06.2014 and the said dismissal was confirmed in W.A.(MD)No.750 of 2014 on 12.12.2015. As against the order of the Division Bench in W.A.(MD)No.750 of 2014, the temple preferred S.L.P in Civil No.16933 of 2015 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court by its order dated 20.01.2017 set aside the order of the Division Bench and remanded the writ petition to this Court to be heard and disposed of afresh. The relevant portion of the order of the Hon'ble Supreme Court runs as follows:-

"We set aside the impugned order and restore the writ petition which shall be decided by the High Court. It is made clear that this Court has not expressed any opinion on the merits of the contentions raised in the writ petition. It would be open to the respondents to contest the said writ petition on all grounds that are available to them."

4.It is also observed by the Hon'ble Supreme Court that this Court had not dealt with the question as to whether the impugned proceedings were contrary to Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thus, the writ petition has been listed before me for disposal on merits.



5. Heard Mr.V.Sitharanjandas for the petitioner, Mr.B.Pugalenth, learned Additional Advocate General, Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents 1, 3 to 5 and Mr.G.R.Swaminathan for the second respondent.

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6. The question that arises in this writ petition as to the scope and power of the Hindu Religious and Charitable Endowments Department to appoint a Fit Person to take over the management of a temple belonging to a religious denomination de hors the decree for declaration and permanent injunction granted by a competent Civil Court. The fact that the petitioner temple was declared to be one belonging to a religious denomination by a competent civil Court in O.S.No.78 of 1976 is not in dispute. It is also not in dispute that the judgment and decree in O.S.No.78 of 1976 have become final. The Commissioner, HR & CE Department was the third defendant in the said suit. The findings of the Civil Court in the judgment in O.S.No.78 of 1976 dated 10.01.1979 are as follows:-

"....Under the circumstances detailed above I am of the opinion that the suit temple is not the public temple, but the denominational temple of the plaintiffs 1 and 2 and their pangalis and the same is in their possession and management. Hence, I find under Issue No.4 that the suit temple is not the public temple as contended by the defendants; on issue No.5 that the plaintiffs 1 and 2 and their pangalis alone have got right of management and possession of the suit temple and on issue No.6 that the plaintiffs alone have got right over the suit temple."

In the result, the suit in O.S.No.78 of 1976 which was filed for declaration that the suit temple is a denomination temple belonging to the Dharichier Gothram of 24 Manai Telegu Chetty community and permanent injunction restraining the defendants from interfering with the management of the suit temple by the plaintiffs 1 and 2 was decreed.

7. Mr.V.Sitharanjandas, learned counsel for the petitioner would contend that the respondent has no power to appoint a Fit Person for the temple which has been declared as belong to a religious denomination in view of the protection afforded to a religious denomination under Article 26 of the Constitution of India and Section 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity, 'the Act'). The Article 26 of the Constitution, reads as follows:-

"26. Freedom to manage religious affairs:-Subject to public order, morality and health, every religious denomination or any section thereof shall have the right-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and



(d) to administer such property in accordance with law."

8. Section 107 of the Act reads as follows:-

"107. Act not to affect rights under Article 26 of the Constitution.-Nothing contained in this Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution."

9. The extent of protection granted to a religious denomination under Article 26 has been a subject matter of several decisions of this Court as well as the Hon'ble Supreme Court. In **R. Murali and others Vs. Kanyaka P. Devasthanam and Charities and others** reported in **2005 (4) CTC 234**, the Hon'ble Supreme Court considered the scope and extent of the protection available to temples which have been declared as temples belonging to religious denominations and observed as follows:-

"19. As a result of decree of declaration that the institution is of religious denomination of Arya Vysya community, it had protection under Article 26 of the Constitution of India from interference in its administration by the authorities under the Tamil Nadu Act. This right guaranteed under Article 26 of the Constitution has been expressly protected under Section 107 of the Tamil Nadu Act by making inapplicable the other provisions of the Act including Section 64 to institutions of religious and charitable nature of religious denominations."

10. A Division Bench of this Court in **Madurai Sourashtra Sabha rep by its Honorary Secretary, R.V. Seshachary, Madurai Vs. State of Tamil Nadu** reported in **(2007) 2 MLJ 913**, again considered the scope of protection available to such institutions. The Division Bench observed that in view of the earlier decree granted by a competent Civil Court declaring the institution as belong to a religious denomination, the authorities under the Act cannot assume powers to call for accounts which are properly maintained and audited. The following observations of the Division Bench can be usefully extracted:-

"....On considering together the constitutional provision viz., Article 26, Section 107 of the Act and the Division Bench decision of this Court in the Appeal Suit, wherein the petitioner herein was the appellant, we find that the Sabha is a religious denomination and the Temple is a denominational Temple governed by Article 26(a) & (b) of the Constitution of India. Though the authorities under the Act are empowered to go into the affairs of the Temple particularly with regard to maintenance of accounts, we are of the view that in the case of a denominational Temple, it is not automatic or a regular feature for the authorities to



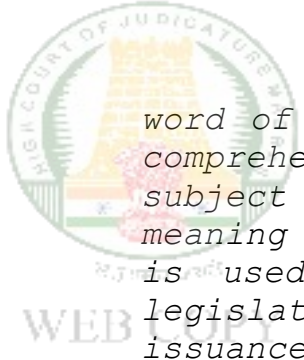
interfere or verify the accounts whenever they desire so, under the guise of exercising the superintending power. In other words, the HR & CE authorities, before proceeding to act in terms of the powers vested in them, should deeply consider as to whether auditing is warranted based on the complaints or allegations such as mismanagement etc. As observed by the Division Bench, so long as the income and expenditure are properly accounted for, there is no need for the HR & CE Department to call for the records or interfere with their accounts. It is made clear that if there is a specific complaint/allegation, undoubtedly, the authorities can summon all the relevant records for their verification."

11. Recently, the Hon'ble Supreme Court had revisited the law relating to the protection available to the institutions declared as belonging to religious denominations in **Dr. Subramanin Swamy and others Vs. State of Tamil Nadu** reported in (2014) 1 MLJ 622. The Hon'ble Supreme Court after referring to the entire case law on the subject has concluded that the power of HR & CE Department to regulate the functioning of such institution cannot be extended to virtual displacement of the persons in management and take over the management of the temple. The Hon'ble Supreme Court had observed as follows:-

"47. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

Super-session of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the approval of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

Regulate is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word 'regulate' is difficult to define as having any precise meaning. It is a



word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word 'regulate' is elastic enough to include issuance of directions etc., (vide *K.Ramanathan Vs.State of Tamil Nadu* and another, AIR 1985 SC 660 : (1985) 2 SCC 116: LNIND 1985 SC 69; and *Balmer Lawrie and Company Limited and others Partha Sarathi Sen Roy and Others*, (2013) 8 SCC 345: LNIND 2013 SC 138).

48. Even otherwise it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous method. In *Sant Lal Gupta and others Vs.Modern Coop.Group Housing Society Ltd.*, and others (2010) 13 SCC 336: LNIND 2010 SC 995: (2011) 3 MLJ 606, this Court held:

"It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud". An authority cannot be permitted to evade a law by "shift or contrivance"."

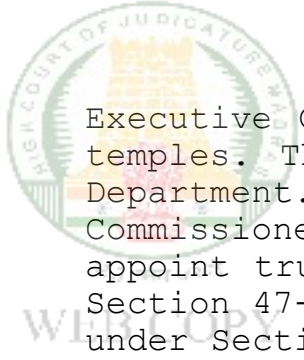
12. In the light of above legal position, it will have to be examined as to whether the impugned action of the first respondent in appointing a Fit Person with a direction to him to take over the management of the petitioner temple is within the powers which are greatly curtailed by Article 26 of the Constitution and read with Section 107 of the Act.

13. Mr.V.R.Shanmuganathan, learned Special Government Pleader, HR & CE would counter the said submissions contending that unless a fit person is appointed, the Department cannot regulate the administration. He would add that the extreme step of appointment of a fit person was taken considering constant disputes between the persons belonging to the 24 Manai Telugu Chettiars in the locality which led to breach of peace. It is also his claim that donations collected for renovation were not properly accounted for.

14. Learned Special Government Pleader, HR & CE appearing for the respondents 1, 3 to 5 would contend that in view of the order of the Hon'ble Supreme Court, the scope of enquiry in the writ petition should be limited to the power under Section 47 of the Act. A reading of the order of the Hon'ble Supreme Court would show that all issues are left open and the parties were at liberty to address all issues before this Court, therefore, I do not think that I must restrict the scope of enquiry in the writ petition only to the power under Section 47 of the Act.

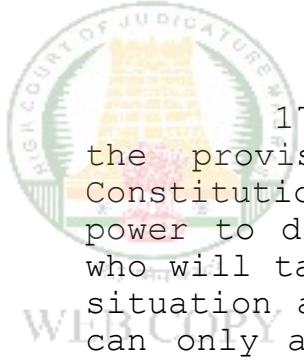
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15. Section 45 of the Act enables the authorities to appoint



Executive Officers for temples which are either listed or unlisted temples. The said power is vested in the Commissioner of HR & CE Department. Section 47 of the said Act enables the Joint Commissioner/Deputy Commissioner/ Commissioner or the Government to appoint trustees to a temple depending on the income of the temple. Section 47-A enables the Government to delegate any of its functions under Section 47 or the second proviso to sub-section (1) of Section 49 to the Commissioner. Section 49 empowers the Assistant Commissioner to appoint trustees and Fit Persons. Presumably, the impugned order has been passed by the first respondent only under Section 49 of the Act.

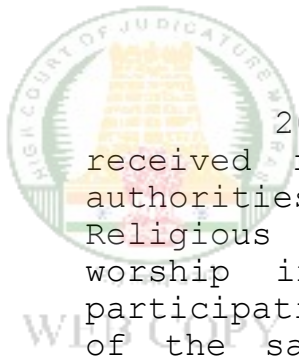
16.A reading of Section 107 of the Act extracted above would show that the provisions of Section 49 of the Act will not apply to a temple which has been declared to be one belonging to a religious denomination. Therefore, it is clear that the Assistant Commissioner, HR & CE Department has no power to appoint a Fit Person to a temple which has been declared as a religious denomination. It is precisely on this ground, the appointment of the Executive Officer to the **Sri Sabhanayagar Temple** was set aside by the Hon'ble Supreme Court in **Dr.Subramanian Swamy's case** (supra). It should not be understood that the authorities have no power to regulate management or administration of the temples which belong to a religious denomination in case of specific complaints of maladministration or mismanagement. As pointed out by the Division Bench of this Court in **Madurai Sourashtra Sabha's case** cited (supra), the authorities no doubt have the power to regulate. To what extent the said power can be exercised has to be decided on the facts of each case and the nature of the complaints that were received by the authorities regarding mismanagement. The impugned order does not give details of the alleged irregularities in the management. It only says that there are some irregularities in the management of the temple and renovation work is being carried on without permission of the Department at the cost of Rs.3 Crores. This by itself cannot justify the appointment of Fit Person displacing the hereditary trustees whose right have been recognised by a competent Civil Court. The very fact that a declaration has been granted to the people belonging to the Dharichier Gothram of 24 Manai Telegu Chetty community would amount to a declaration of their status and the said judgment is a judgment in rem. The finality attached to the said judgment cannot be disturbed. The rights of the people belonging to the Dharichier Gothram of 24 Manai Telegu Chetty community has been finally determined by the Civil Court in O.S.No.78 of 1976 and it is therefore, not permissible for the authorities to pass any order divesting the said persons from the management and administration of the temple. As pointed out by the Hon'ble Supreme Court in **Dr.Subramanian Swamy's case** cited (supra), general principles of *res judicata* would apply and the authorities would be violating the decree for permanent injunction granted by the Civil Court if they interfere with the right of the people belonging to the religious denomination to be in management of the temple.



17. The Supreme Court has also pointed out that in view of the provisions of Section 107 read with Article 26 of the Constitution of India, the authorities under the Act do not have the power to divest the persons in management and appoint a Fit Person who will take over the entire management of the temple. Even if such situation arises in extreme cases of mismanagement, the authorities can only appoint a Fit Person or take over the management of the temple to remedy the evil and it has to be handed over back to the persons immediately after the evils stand remedied. Any continuation of the authorities in management of the temple thereafter would according to the Supreme Court, tantamount to usurpation of their proprietary rights or violation of fundamental rights guaranteed by the Constitution of India in favour of the persons deprived. The Supreme Court went on to point out that such order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. The Supreme Court also dealt with the power to regulate and held that power to regulate does not mean power to supersede the administration for indefinite period. The definition of the word 'regulate' was also considered and the Supreme Court finally held that it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous methods.

18. In the light of the above observations of the Supreme Court, it is clear that the power vested in the Department to regulate the affairs of a temple managed by people belonging to religious denominations whose right has been declared by the competent court is very limited. A perusal of the impugned order in this case does not show that the appointment of a Fit Person was for a specific period or was for remedying any particular instance of mismanagement or maladministration.

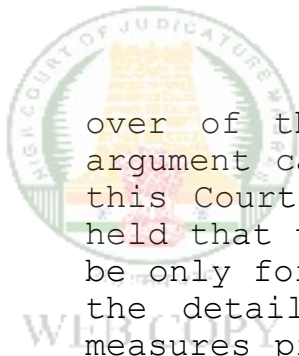
19. In the counter affidavit filed in support of the writ petition by the first respondent, it is stated that there were certain internal disputes between the persons in management of the temple and others belonging to the same sect as that of the persons who are in management and a suit in O.S.No.288 of 2010 came to be filed. This has resulted in likelihood of breach of peace and six peace committee meetings were held before the revenue authorities wherein no decision or compromise was arrived at between the parties. It is seen from the said counter itself that certain persons claiming to be belonging to the same community had filed a suit in O.S.No.288 of 2010 with a prayer for permanent injunction restraining the defendants therein, their men, agents, servants and all other persons claiming under them from interfering with the right of the plaintiffs to enter into the suit temple, offer worship and participate in renovation work or Kumbabishekam of the temple. It is for them to work out their rights in the said suit. Mere filing of a civil suit cannot be a ground for appointment of a fit person.



20. It is further stated that spate of complaints were received from the public as well as community people by the authorities of the District Administration and also by the Hindu Religious and Charitable Endowments Department regarding denial of worship in the temple, conduct of the temple festivals and participation in the Kumbabisekam works between two groups of people of the same community. Hence, it appears that peace committee meetings were conducted by the Tahsildar, Musiri on 23.01.2012 and no agreement could be arrived at between the parties. It is also alleged that the Revenue Divisional Officer, Musiri, conducted five peace committee meetings between 18.02.2012 and 10.03.2013 in an attempt to bring about solution to the issue which did not succeed. It is further claimed that there were complaints regarding huge sums of money received from the community people and other public to the tune of Rs.3 Crores without obtaining necessary permission from the H.R. & C.E. Authorities. The very requirement of permission from the HR & CE authorities for renovation of the petitioner's temple is doubtful. When once it is held that the provisions of the Act would not apply except the provisions of Section 106 which deal with equality in distribution of Prasadam or Theertham and clause (2) of Article 25 of the Constitution of India, I do not think that it could be stated that it is mandatory for the religious denomination to obtain permission from the concerned Department for renovation of the temple. If there is any complaint regarding the collection of public funds, donations for the purpose of renovation and their alleged misuse, it is open to the authorities to issue specific notice to the persons in management and verify the accounts. Therefore, the said complaints cannot be a ground for taking over of the management of the temple as such. The counter affidavit filed by the first respondent further claims that certain peace committee meetings were conducted and since no consensus was arrived at a Fit Person was appointed.

21. In order to find out the legal basis or the statutory power under which the so-called peace committee meetings were held by the revenue officials, I requested the learned Additional Advocate General to point out any specific statutory provision or rule which enables the authorities to conduct peace committee meetings and thrust their decisions on the participants. He would fairly submit that there is no such statutory power either under any of the statutes or under the Rules which enable the authorities to conduct such peace committee meetings. It is common knowledge that such peace committee meetings are often used as a tool to thrust the decision of the revenue authorities on the participants. Therefore, the convening of peace committee meetings and the failure to reach an amicable solution cannot be a ground to take over of the management of the temple from the persons belonging to a religious denomination to whom the temple has been declared to belong.

22. Mr. V.R. Shanmuganathan, learned Special Government Pleader appearing for the HR & CE would contend that the mismanagement or maladministration cannot be remedied without taking



over of the management of the temple. I do not think that this argument can stand judicial scrutiny in view of the law declared by this Court as well as the Supreme Court. It has been categorically held that take over should be the last resort and such take over can be only for a limited period. The impugned order does not spell out the details of the so-called maladministration and the remedial measures proposed. It does not state that it will be in force for a particular period. Therefore, I have no hesitation in holding that the impugned order is beyond the powers of the first respondent and the same is liable to be quashed. Accordingly, the impugned order of the first respondent appointing a Fit Person for the temple in question is quashed. This writ petition is allowed. Rule nisi is made absolute. However, this will not prevent the first respondent from taking any action to remedy the evils of alleged mismanagement or maladministration by taking appropriate action short of take over of the entire management of the temple.

23.It is further claimed in the counter affidavit filed by the first respondent that the general public as well as the people belonging to the community are not allowed to worship in the temple. The persons in management are not allowed to prevent any person from worshipping in the temple. Section 107 of the Act itself makes it clear that the protection afforded to a religious denomination under Article 26 is subject to Article 25 (2) of the Constitution of India and Section 106 of the Act. Therefore, if there is any complaint regarding the denial of right to worship by any person, the same can be remedied by the authorities by taking suitable action. It is made clear that the power to manage does not include the power to mismanage. If there is any specific instance of mismanagement or maladministration, it is open to the authorities concerned to take suitable action to remedy the situation.

24.Before parting with this case, I must point out that convening of so-called peace committee meetings has become a regular machinery adopted by the revenue authorities to thrust their decisions on the participants. No doubt, true that the peace committee meeting serves as an Alternative Dispute Resolution Mechanism. But at the same time, we find instances like the case on hand where a resolution in a peace committee meeting leads to exercise of unbridled executive power which often leads to such illegal actions being taken by the authorities concerned. Therefore, the revenue officials who convene peace committee meetings must ensure that the decisions are arrived in a peaceful atmosphere and their own decisions are not thrust upon the participants leading to more litigations. This Court places on record its gratitude to Shri.B.Pugalendhi, the learned Additional Advocate General for his assistance. No costs. Consequently, M.P(MD)Nos.2 to 5 of 2013 are closed.

Sd/-
Assistant Registrar(RTI)



To

1. The Assistant Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Malaivasal, Trichy 1.
2. The Inspector,
Hindu Religious and Charitable Endowments,
Musiri (East) Musiri, Trichy District.
3. The Joint Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Malaivasal, Trichy 1.
4. The Commissioner,
Department of Hindu Religious and
Charitable Endowment
Uthamar Gandhi Road,
Nungambakkam,
Chennai 36.

+1cc to Mr.G.R.SWAMINATHAN Advocate in SR. No.59523

+1cc to Mr.V.SITHARANJANDAS Advocate in SR.No.61702

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JS/SV/SAR.1/17.7.2017/11P-7C

Order made in
Writ Petition (MD) No. 5201 of 2013
and
M.P (MD) Nos. 2 to 5 of 2013
23.06.2017