

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.Nos.203, 204, 362 and 363 of 2018
and

C.M.P.Nos.1547, 1548, 6105, 6106, 2870 and 2871 of 2018

W.A.No.203 of 2018

- 1.N.Manoharan
- 2.A.Ganesan
- 3.A.Manoharan
- 4.A.Mohammed Nabi
- 5.M.Ashok Kumar
- 6.B.Venkatesan
- 7.Sivalingam Vasantha
- 8.K.Babu
- 9.M.Muthusamy
- 10.M.Radhakrishnan
- 11.A.Ravi
- 12.J.Nandhini
- 13.D.Gunasekaran
14. P.Vijayarangan
- 15.B.Maarikani
- 16.V.Pandiyar
- 17.Visalakshi
- 18.Ravichandran
- 19.Rajendrakumar
- 20.M.N.Jayalakshmi
- 21.Geetha
- 22.Noorunisha
- 23.J.Janaki Rani
- 24.J.Ambrose

....Appellants/Petitioners 1 to 17

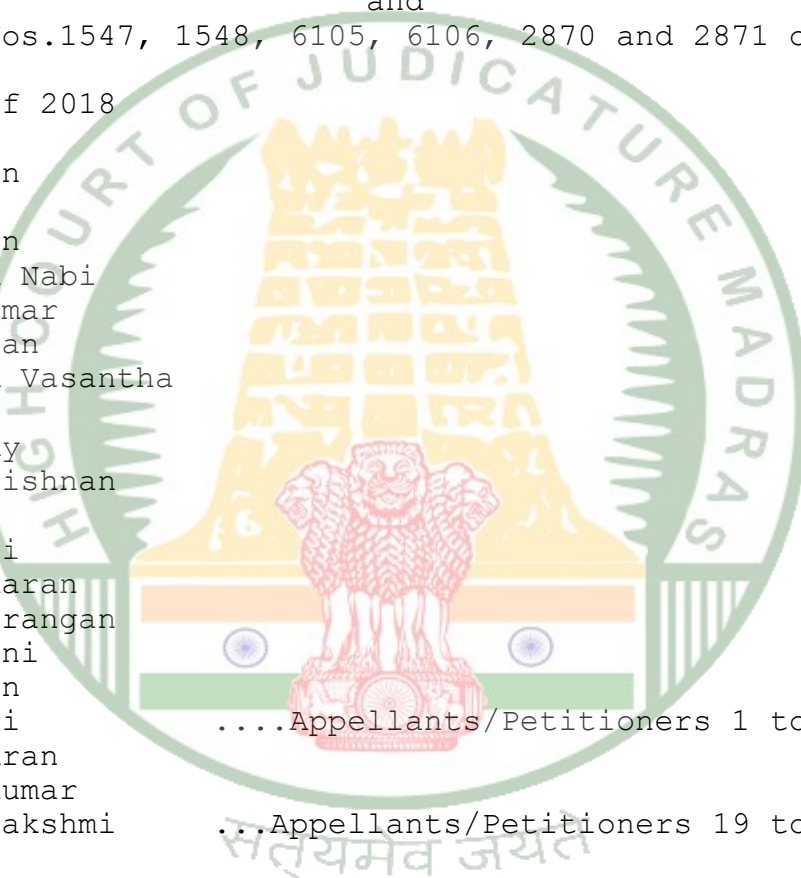
...Appellants/Petitioners 19 to 21

...Appellants/Petitioners 24 to 26

- 25.A.Kannan
- 26.G.Kuppusamy
- 27.G.Jenagan
- 28.S.Srinivasan
- 29.P.Ravichandran
- 30.M.Venkatesh Babu
- 31.Rukmani Ammal
- 32.D.Thiyagarajan

...Appellants/Petitioners 28 to 35

...Appellants/Petitioners 37



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33.Chinna Kuzhandai
34.P.Ramajayam
35.K.Dhanabal
36.K.Dhabarak
37.R.Muthukrishnan
38.P.Lakshmanan
39.R.Anwar
40.S.Prabhu
41.G.Ashok Raj
42.S.Rani
43.P.Elango
44.Geetha Rani
45.M.Radha

...Appellants/Petitioners 39 to 40

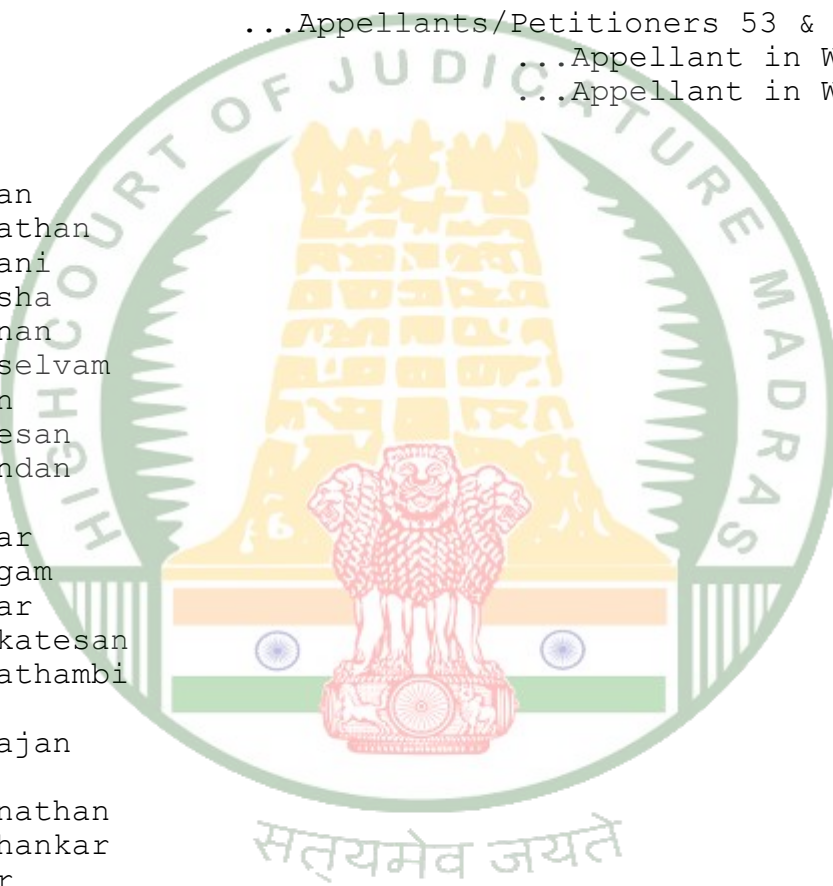
...Appellants/Petitioners 42 to 50

...Appellants/Petitioners 53 & 54

...Appellant in WA.203/18

...Appellant in WA.204/18

N.Srinivasan
1.C.Ranganathan
2.P.Subramani
3.T.Gowsbasha
4.C.Narayanan
5.E.pannerselvam
6.K.Elappan
7.P.Vengadesan
8.N.Manikandan
9.V.Selvam
10.M.Shankar
11.A.Arumugam
12.K.Manohar
13.P.V.Venkatesan
14.S.Chinnathambi
15.V.Sekar
16.D.Maharajan
17.S.Ravi
18.C.Ranganathan
19.N.Ravishankar
20.P.Sankar
21.A.Kuthbudeen
22.A.Q.Shajuruddin
23.C.Parthiban
24.S.Manikandan
25.M.Elumalai.



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... Appellants in
W.A.No.362 of 2018

1.K.Dhanapal

2.A.S.Sekar

.. Appellants in
W.A.No.363 of 2018

Vs

- 1.The State of Tamil Nadu
Rep. by its Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration
Municipal Administration Department
Ezhilagam Annexe - 6th Floor
Chepauk
Chennai - 600 005.
- 3.The Regional Director of Municipal Administration
Vellore.
- 4.The Commissioner
Thiruvannamalai Municipality
Thiruvannamalai.

.. Respondents in
all W.As'

Writ Appeal Nos.203 and 204 of 2018 filed under Clause 15 of the Letters Patent against the orders dated 30.10.2017 made in WP.Nos.9948 and 16095 of 2017 passed by the learned Single Judge.

Writ Appeal Nos.362 and 363 of 2018 filed under Clause 15 of the Letters Patent against the orders dated 20.11.2017 made in WP.Nos.10591 and 19185 of 2017 passed by the learned Single Judge.

Prayer in WP.Nos.9948/17, 16095/17, 10591 and 19185/2017:Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of declaration to declaring that the demand made by the 4th respondent for payment of revised rent from the petitioners for the shops allotted to them within the Tiruvannamalai Municipality (2) for shop No.10, New Bus Stand, Polur Road, Thiruvannamalai Municipality and the petitioners for the shop allotted to them within the Thiruvannamalai Municipality more than 450%, 490, 450 & 400% respectively of the existing rent by communication dt 11.3.2017 in Na. Ka. No.A1/4839/2016 as being illegal and unreasonable.

For Appellants :	Mr.T.Sai Krishnan
(in all W.As')	
For Respondents:	Mr.R.Udhayakumar,
(in all W.As')	Addl. Govt. Pleader [R1 to R3]
	Mr.A.S.Thambusamy [R4]

COMMON JUDGMENT

[Judgment of the Court was made by M.SATHYANARAYANAN, J]

By consent, all these writ appeals are taken up together and disposed of by these common judgment, as the issue to be adjudicated is one and the same. Mr.R.Udhaya Kumar, learned Additional Government Pleader accepts notice on behalf of respondents 1 to 3 and Mr.A.S.Thambusamy, learned Standing Counsel accepts notice on behalf of the fourth respondent.

W.A.Nos.203 & 204 of 2018

2. The appellants/writ petitioners claim that they are carrying on their trades and business in small shops allotted to them by the fourth respondent Municipality viz., Tiruvannamalai Municipality and most of the appellants/writ petitioners are carrying on small business such as eateries, tea shops, juice shops, sweet stall, bakery, bunk shop, Medical shop, call service centres, cycle shop, CD shops, electrical service shop etc., and the size of the shops allotted to them are ranging from 80 sq. ft. to 300 sq. ft. It is further averred that the fourth respondent increased the lease amount every three years by 15% and it has been paid regularly and for that purpose, the respondents are adopting G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4) Department, dated 03.07.2007. The appellants/writ petitioners would further state that though the lease period of 9 years came to an end by March 2017, the fourth respondent had issued a notice dated 11.03.2017 calling upon the appellants/writ petitioners to pay the demand revised from April 2017 onwards and according to the appellants/writ petitioners, the said notices are arbitrary and unreasonable for the reason that the details as to the quantum of enhanced lease amount has not been disclosed and since the appellants/petitioners are eking out their livelihood by carrying out commercial activities as small time traders, are not in a position to pay the same and in that event they are likely to be dispossessed and apart from themselves, their families are also eking out their livelihood and therefore, made a challenge in the form of declaration to declare the demand notice dated 11.03.2017 made by the 4th respondent Municipality by enhancing the existing rent more than 450%, is unsustainable.

3. The said writ petitions were entertained and the fourth respondent has filed the counter affidavit, wherein it is averred that the appellants/writ petitioners are in occupation right from the year 1982 onwards and originally, very meager amount was fixed as lease amount and it has been increased periodically by very small percentage and in most of the cases, the lessees are in occupation of the shops for more than 20 to 30 years and the lease amount paid was also very meager.

Therefore, a decision has been taken to increase the same and accordingly, the fourth respondent had obtained guideline value and took into consideration the age, nature and location of the shops, fixed the market rate and based on which, the lease amount has been fixed and it cannot be faulted with. It is also the stand of the fourth respondent that the second respondent had issued instructions to the third respondent to form a committee to arrive at prevailing market rate and accordingly, the third respondent, vide proceeding dated 02.12.2016 bearing R.O.C.No.5527/2016/A2, had formed a Monitoring Committee consisting of the following members.

Chairman: Regional Director of Municipal Administration, Vellore.

Vice Chairman: Regional Executive Engineer, Vellore.

Members: 1. Municipal Commissioner of the Municipality
2. Manager of the Municipality
3. Municipal Engineer of the Municipality
4. Town Planning Officer of the Municipality
5. Revenue Inspector of the Municipality.

4. The said committee, after inspection and considering all the relevant facts, thought fit to increase the rent and it was also approved by the fourth respondent in the capacity of Special Officer of the Municipal Council, vide Resolution No.690 dated 31.03.2017. The fourth respondent has also took a stand that the the location of the shops is in the prime area and is having commercial value and during festive times and other festivals in connection with Lord Arulmigu Arunachaleswarar, the petitioners earn very large amount and therefore, stated that the revised rent is not on the higher side and prays for dismissal of those petitions.

W.A.No.362 of 2018

5. The writ petitioners are the appellants and taking similar stand as to that of the appellants in W.A.Nos.203 and 204 of 2018 and they made a challenge to the very same impugned communication of the fourth respondent dated 11.03.2017.

W.A.No.363 of 2018

6. The appellants/writ petitioners would contend that the first appellant is in possession of 80 sq.ft of shops and the original rent was Rs.756/- per month and it has been increased to Rs.3000/- per month and the second appellant is in possession of 190 sq. ft and the existing rent of Rs.2025/- per month is increased to Rs.11875/- per month and they took a similar stand as to that of the appellants in W.A.Nos.203 and 362 of 2018.

7. The learned counsel appearing for the appellants would submit that this Court, while entertaining writ appeal No.203 of 2018, vide order of ad-interim direction dated 07.03.2018,

directed the fourth respondent Municipality to give notice afresh as per the provisions of existing procedure and after giving proper opportunity to them to proceed further as contemplated under law within a period of one month.

8. According to the learned counsel for the fourth respondent Municipality, notices were issued to the appellants on 09.03.2018, for which they submitted their response and thereafter, memo of calculations has also been furnished to the petitioner as to how the the rent amount has been re-fixed/increased and would further aver that the petitioners, as a matter of right, cannot claim to be continued to remain in possession of the same and also took a stand that the lease amount has been used as an augment of the revenue and they have been allowed to continue in possession of the shops for very many decades and that too paid very meager amount and prays for dismissal of these writ appeals.

9. This Court has considered the rival submissions and also perused the materials placed on record.

10. The learned Judge, after taking note of the factual aspects and materials and by placing reliance upon the judgments reported in 2015 (4) MLJ 164 [P.V.Subramanian Vs. Secretary to Government] and 2014(5) MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu] has found that there was no merits in the contention put forth by the writ petitioners and further averred that it is for the petitioners to accept the offer given by the local body, as they being in occupation for several years, and in the event of failure to do so, granted liberty to the fourth respondent to go ahead with the auction and further averred that in case, the petitioners do not give concern for the payment of enhanced amount within one month, it is open to the fourth respondent to go ahead with the auction and till such time, the petitioners may continue in possession of the respective shops in their possession and immediately after termination of the lease period, the petitioners are deemed to have vacated the tenements and the respondents are granted liberty to enter the place with the help of police force, if required.

11. Learned counsel appearing for the appellants would submit that even as per the own admission of the fourth respondent/local body, the appellants/writ petitioners are in possession and enjoyment of the small extent of shops for very many years and they and their family members are solely depend upon the livelihood eked out by running the shops and though memo of calculation have been furnished, the guideline value adopted by the fourth respondent is per se unsustainable, as it is on the higher side and discrimination has also been exhibited while fixing the lease amount for the shops in question and

therefore, prays for setting aside the impugned demand with a request to remand the matter to the fourth respondent Municipality to give opportunity to them to put forth their case in person and thereafter, decide a further course of action.

12. Per contra, Mr.A.S.Thambusamy, the learned Standing Counsel appearing for the fourth respondent would submit that G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4) Department, dated 03.07.2007 also gives guideline value as to the increasing rent and it has been scrupulously complied with and the petitioner, as a matter of right, can continue to remain in possession of the shops in question for very many years and a fair decision has been taken to augment the revenue of the local body and public auction will be resorted to if the appellants/writ petitioners are not willing to pay the enhanced license amount.

13. This Court has considered the rival submissions and also perused the materials placed on record.

14. In (2014) 5 MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu], and in 2015 (4) MLJ 164 [P.V.Subramanian Vs. Secretary to Government] some of the writ petitioners therein made a challenge to the rent fixed by the local body and some of them had questioned the auctions sale notice. The Division Bench of this Court in the above cited decision in 2015 (4) MLJ 164 (cited supra) in paragraph 7, observed as follows:

"7. It is a settled legal principle that whenever the Government grants allotment of public property by way of lease or grants, it cannot act arbitrarily, but must act in accordance with law and the decision should satisfy the test of fairness and reasonableness. The local bodies are enjoined with the duty to take care of the interest of the public, effect developmental activities in the locality maintained public facilities etc., for which funds are required. By way of grant of lease/licenses, the local bodies collect revenue and in order to augment revenue, the best highest price that could be obtained, while leasing out properties has to be insured, so that the interest of the local body is sufficiently protected."

In paragraphs 20, 21, 22 and 24 of the decision reported in (2014) 5 MLJ 129 (cited supra), it is observed as follows:

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.

24. It is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender, as held in P.N.CHINNASAMY AND OTHERS V. THE ASSISTANT DIRECTOR OF TOWN PANCHAYAT, COIMBATORE DISTRICT AND OTHERS ((2011) 1 CTC 584), S.SELVARANI V. THE COMMISSIONER, KARAIKUDI MUNICIPALITY ((2005) 1 CTC 81), C.JAYANTHI V. THE COMMISSIONER, METTUR MUNICIPALITY, SALEM DISTRICT ((2006) 5 CTC 236), D.KANNAN V. THE COMMISSIONER OF MUNICIPAL ADMINISTRATION, CHEPAUK (CDJ 2010 MHC 1636) and RAM AND SHYAM COMPANY V. STATE OF HARYANA AND OTHERS ((1985) 3 Supreme Court Cases 267)."

15. The learned Judge, apart from the above cited judgments, has also taken note of the judgment rendered in (2014) 5 MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu] and observed that the

decision taken by the fourth respondent to increase the rent is correct and also taken note of the submission as to the arbitrary fixation and observed in paragraph No.10 that "merely because there is a reduction of 33% in the guideline value would not be a reason to interfere with the order of the decision of the fourth respondent. The Government might have reduced the guideline value by 1/3 (33%) only to safeguard their interest to avoid paying compensation to the land owners for the lands acquired by them as they need to pay the hefty compensation to the land owners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and not otherwise".

16. Though the appellants took a stand that they are lessees, in the considered opinion of this Court they are merely licensees and admittedly, they are in occupation for at least two or three decades and the local body, in order to augment the revenue and also in public interest, has though fit to revise the same and done that exercise strictly in accordance with G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4) Department, dated 03.07.2007.

17. The learned counsel appearing for the appellants also made a feeble attempt by inviting attention of this Court to the memo of calculations that the guideline value has not been adopted properly and if correct and fair guideline value is adopted, the lease amount is likely to come down. In the considered opinion of this Court, this Court is not in a position to indicate as to whether the calculation is correct or not for the reason that as long as the Committee constituted under G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4) Department, dated 03.07.2007, has taken into consideration all the relevant aspects and done that exercise, this Court in exercise of appellate jurisdiction, is not inclined to interfere with the same.

18. The Division Bench in the decision reported in (2014) 5 MLJ 129 [P.Muthusamy Vs. State of Tamil Nadu] after taking into consideration various decision, in paragraph No.24 observed that "it is settled law that an instrumentality of a State should always endeavour by following the procedure by way of public auction or inviting tender". Since the appellants/writ petitioners are not inclined to accept the enhanced license amount, the fourth respondent is left with no other option except to proceed to allotting the same by having tender/public auction.

19. This Court come across very many cases, where the local body pleaded their inability even to provide a minimum basic amenities by citing the reason of lack of funds. This Court is

of the view that in order to augment the revenue of the local body, tender cum public auction of the shops is the only proper and effective method to augment the income and G.O.Ms.No.92, Municipal and Administration Water Supplies (TN.4) Department, dated 03.07.2007 has outlived it's purpose and utility and also not in consonance with the ratio laid down by the Honourable Supreme Court of India that "the best way to get the maximum revenue is by way of public auction".

20. The appellants are granted time till 04.06.2018 to pay the enhanced lease amount as demanded by the fourth respondent Municipality, failing which it is open to the fourth respondent Municipality to proceed further to conduct tender cum public auction of the shops in question.

21. In the result, these writ appeals are dismissed, confirming the orders dated 30.10.2017 and 20.11.2017 made in WP.Nos.9948 and 16095 of 2017 and WP.Nos.10591 and 19185 of 2017 respectively subject to above directions. However, in the facts and circumstances, there shall be no order as to costs. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/--

Assistant Registrar(CS III)

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Sub Assistant Registrar

vsm

To

- 1.The Secretary to Government
Municipal Administration and
Water Supply Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner of Municipal Administration
Municipal Administration Department
Ezhilagam Annexe - 6th Floor
Chepauk
Chennai - 600 005.

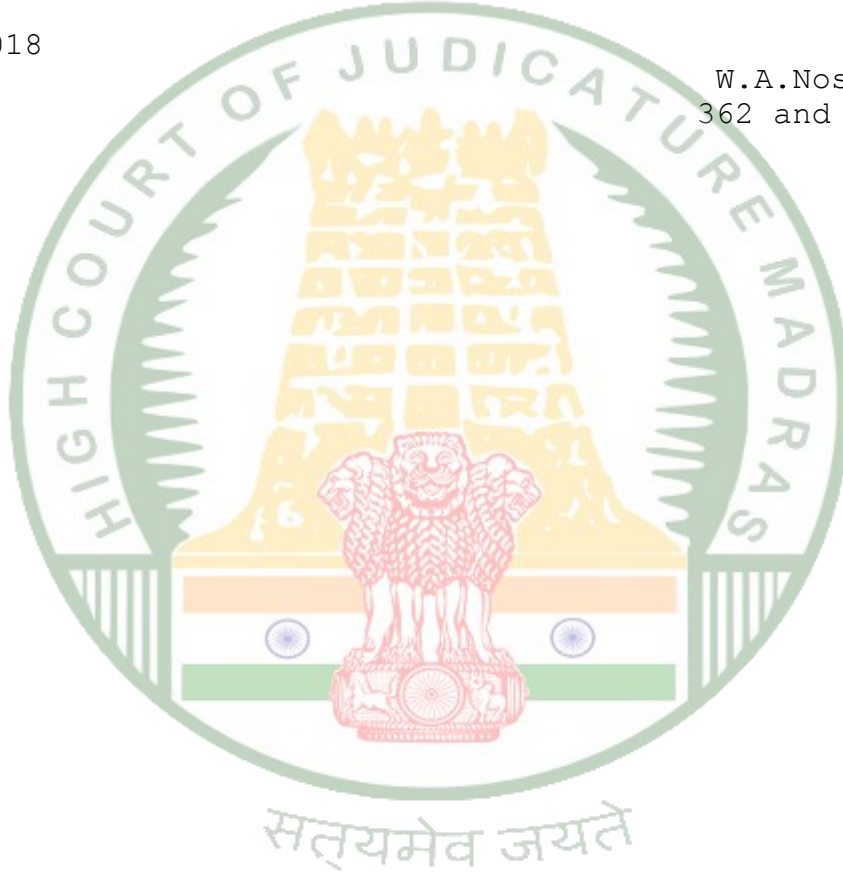
3.The Regional Director of Municipal Administration
Vellore.

4.The Commissioner
Thiruvannamalai Municipality
Thiruvannamalai.

+4cc to Mr.T.Saikrishnan, Advocate SR.No.29317 to 29320
+1cc to Government Pleader sR.No.30010
+1cc to Mr.A.S.Thambuswamy, Advocate Sr.No.29377

RV(CO)
sm:18.5.2018

W.A.Nos.203, 204,
362 and 363 of 2018



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