

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HON'BLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P. No.15030 of 2018

in

WMP.No.17795 of 2018

C.Mathivanan

Petitioner

Vs.

The Commissioner of Municipal Administration,
Ezhilagam Annexe,
Chepauk,
Chennai-5.

Respondent

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue WRIT OF MANDAMUS forbearing the respondent from in any manner transferring the petitioner from the Avadi Special Grade Municipality as its Commissioner to any other Municipality or City Municipal Corporation till the expiry of three years from 09.08.2017.

For petitioner : Mr.N.K.Ponraj

For Respondent : Mrs.R.Janaki
Additional Government Pleader

O R D E R

When the matter is taken up for hearing, the learned counsel for the petitioner sought permission of this Court to withdraw this Writ Petition and also made an endorsement to that effect.

SATRUGHANA PUJAHARI,J

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2. In view of the submission made by the learned counsel for the petitioner and also in view of endorsement made, this Writ Petition is dismissed as withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

22.06.2018

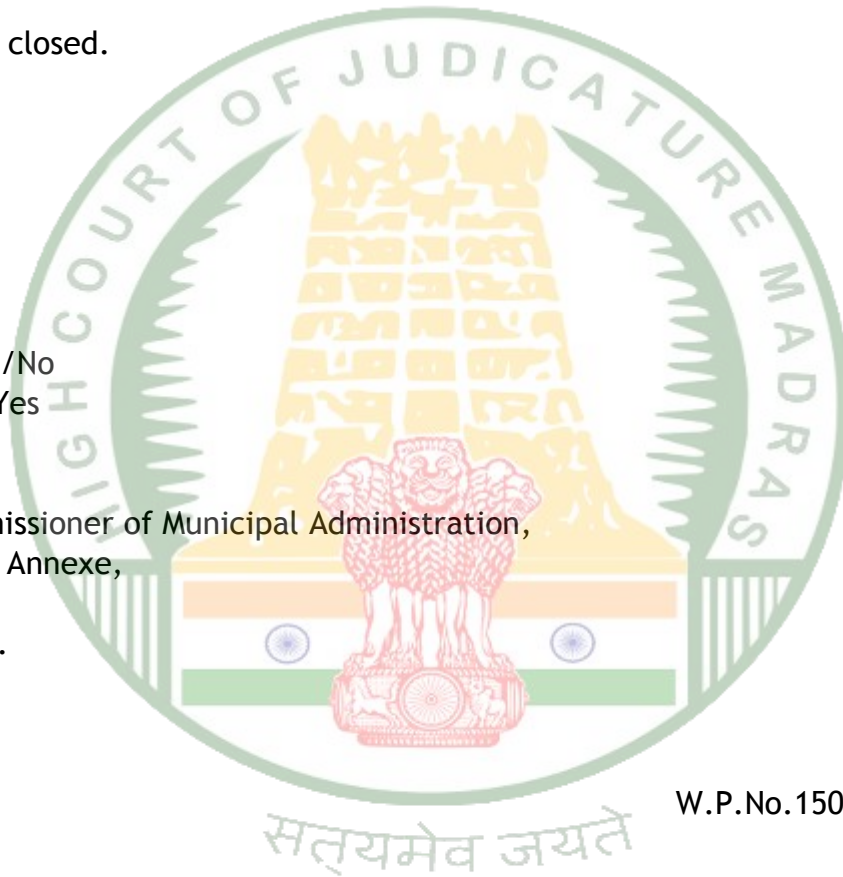
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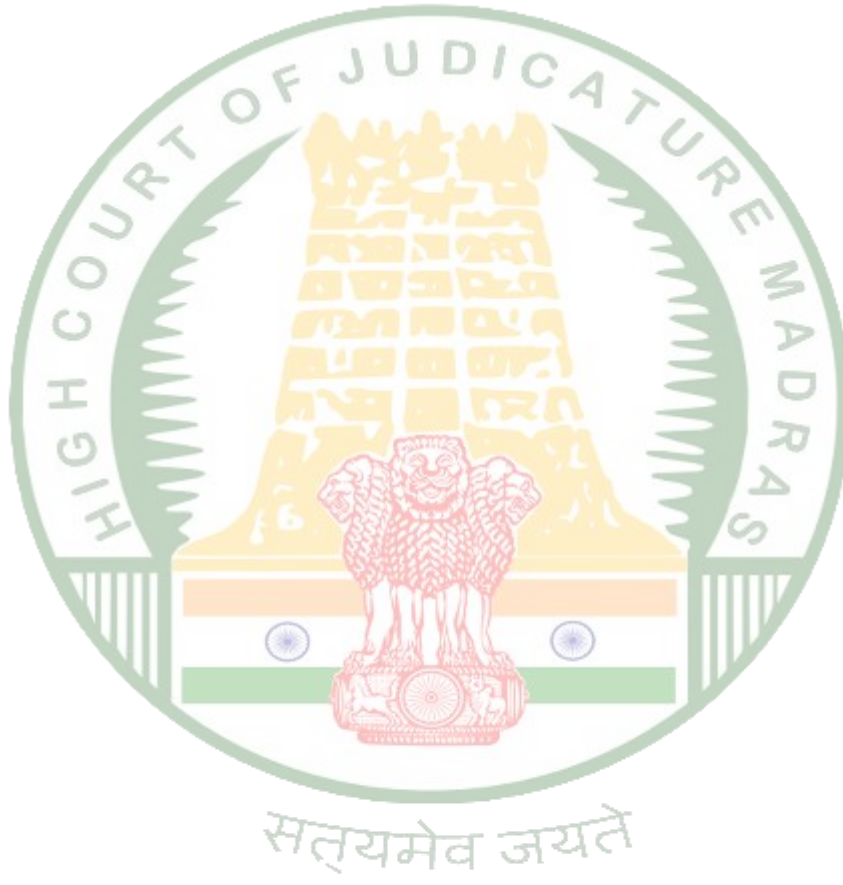
The Commissioner of Municipal Administration,
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Chennai-5.



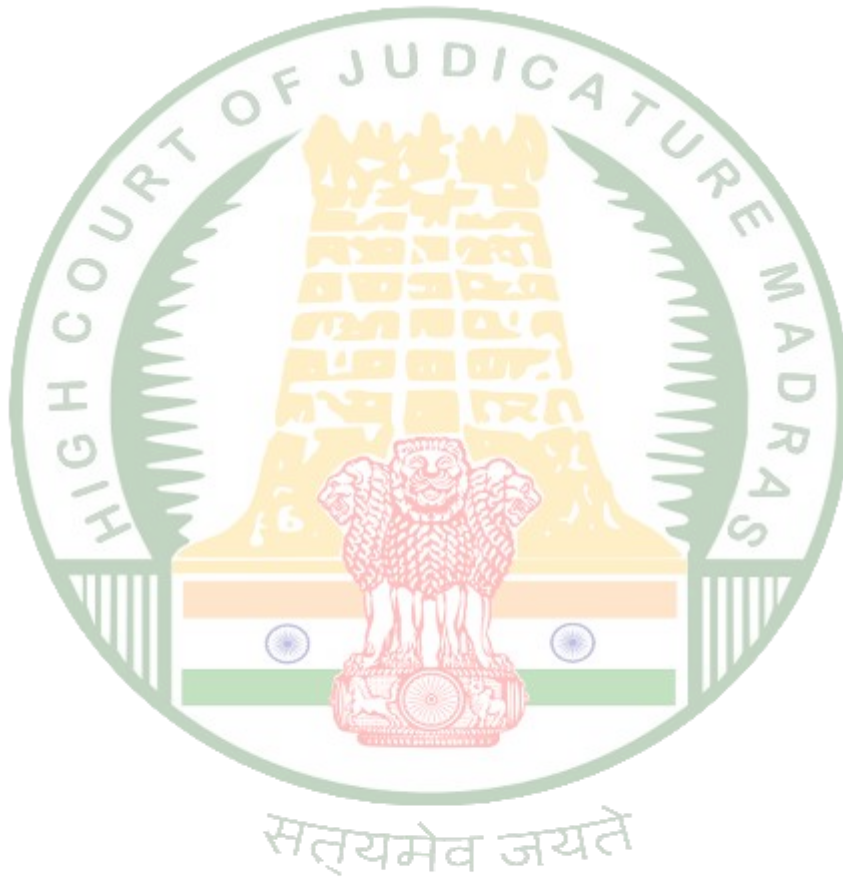
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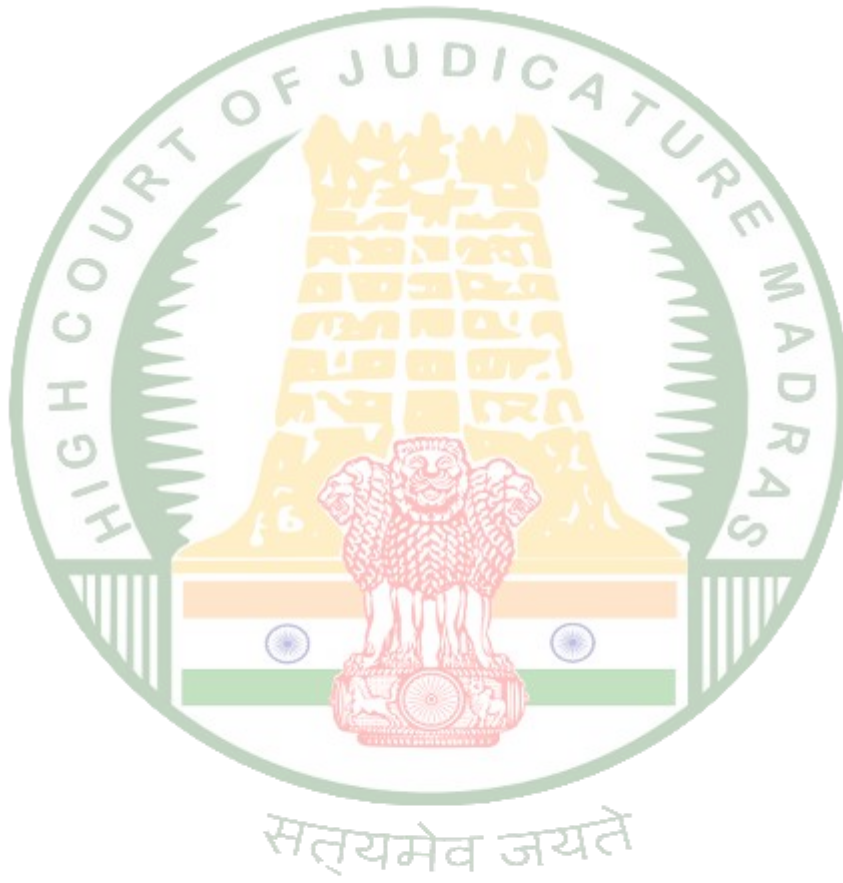
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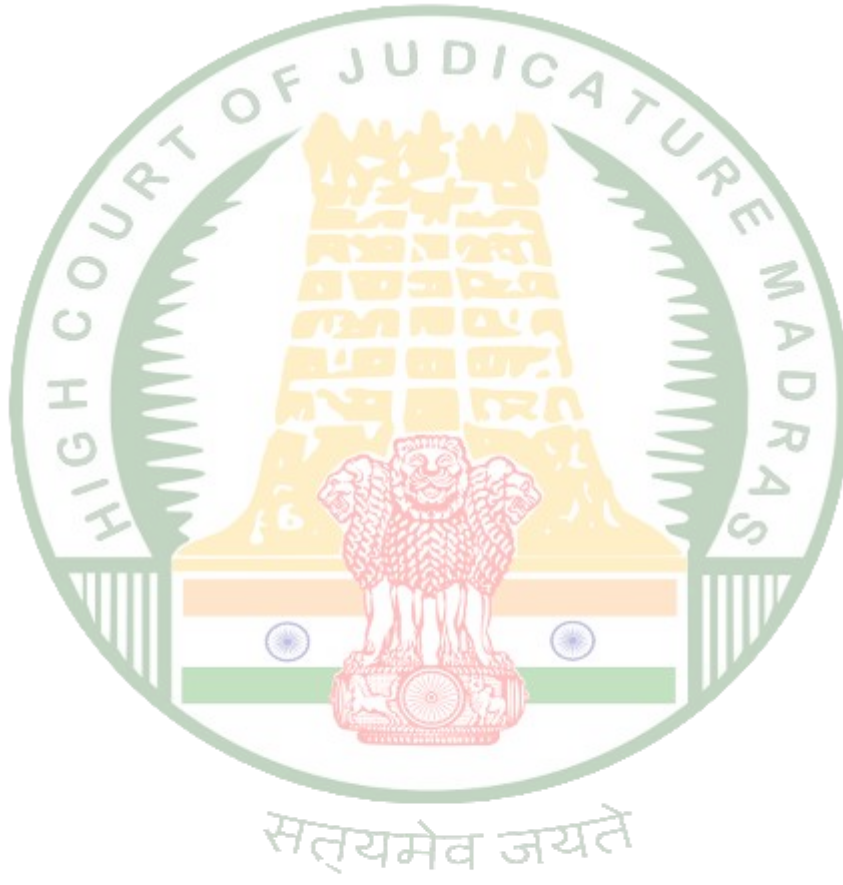
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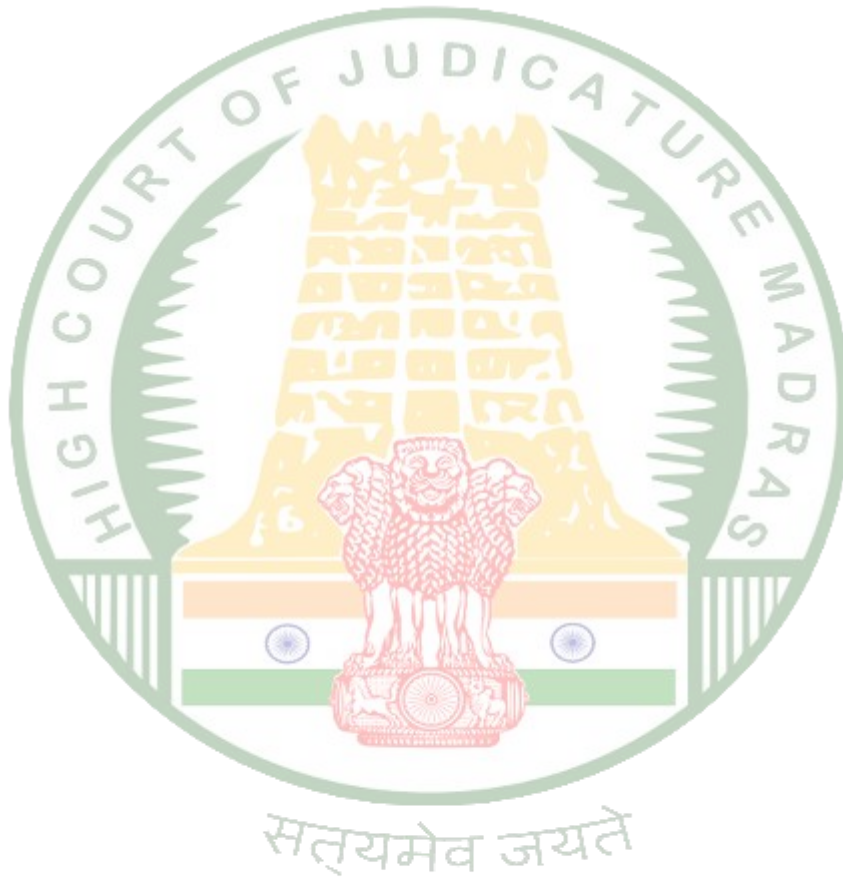
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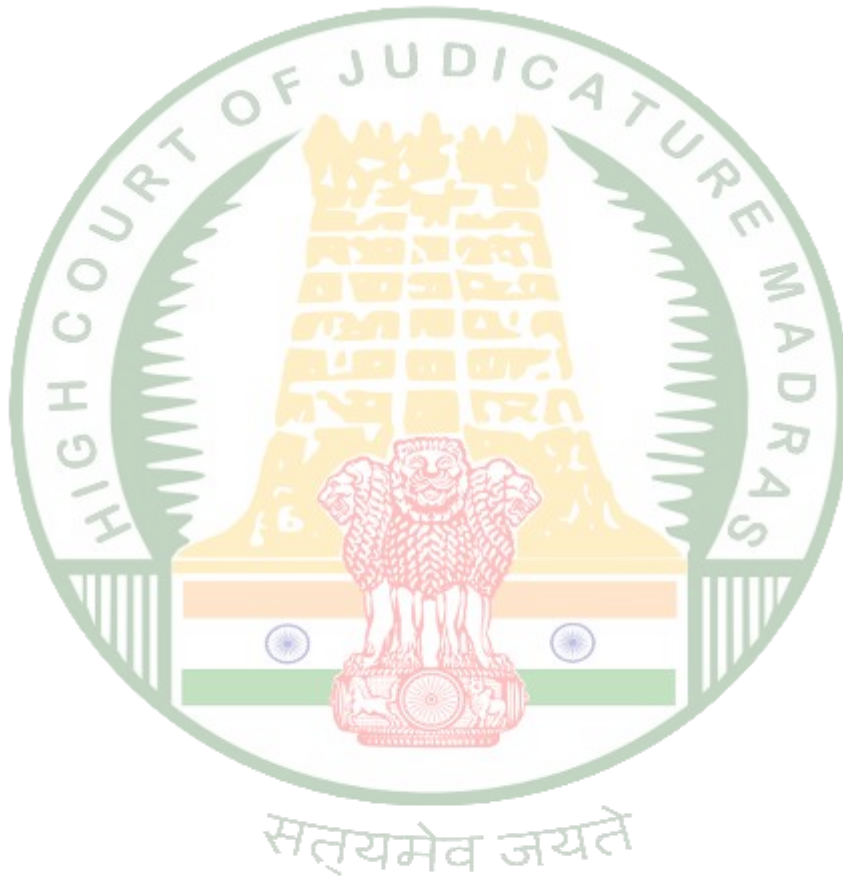
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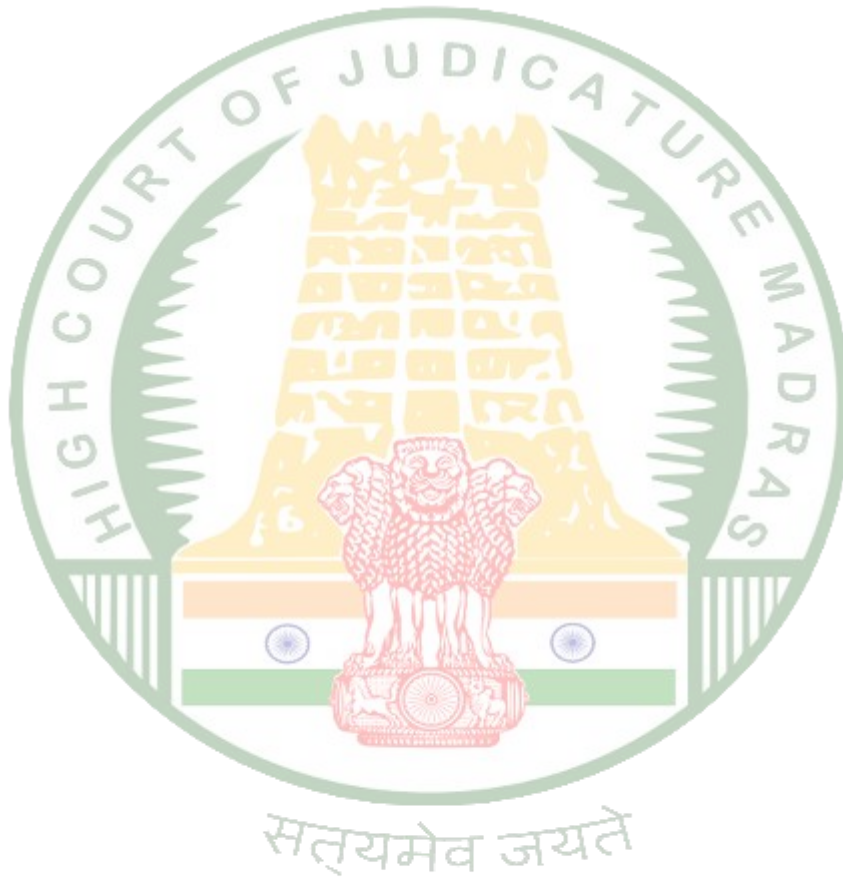
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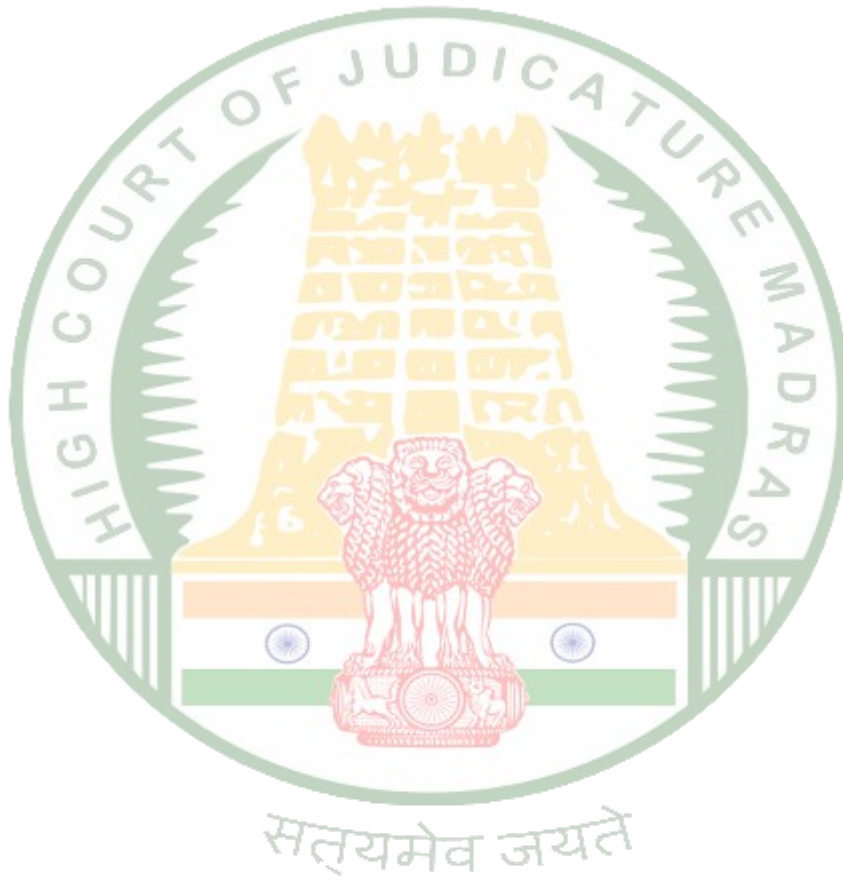
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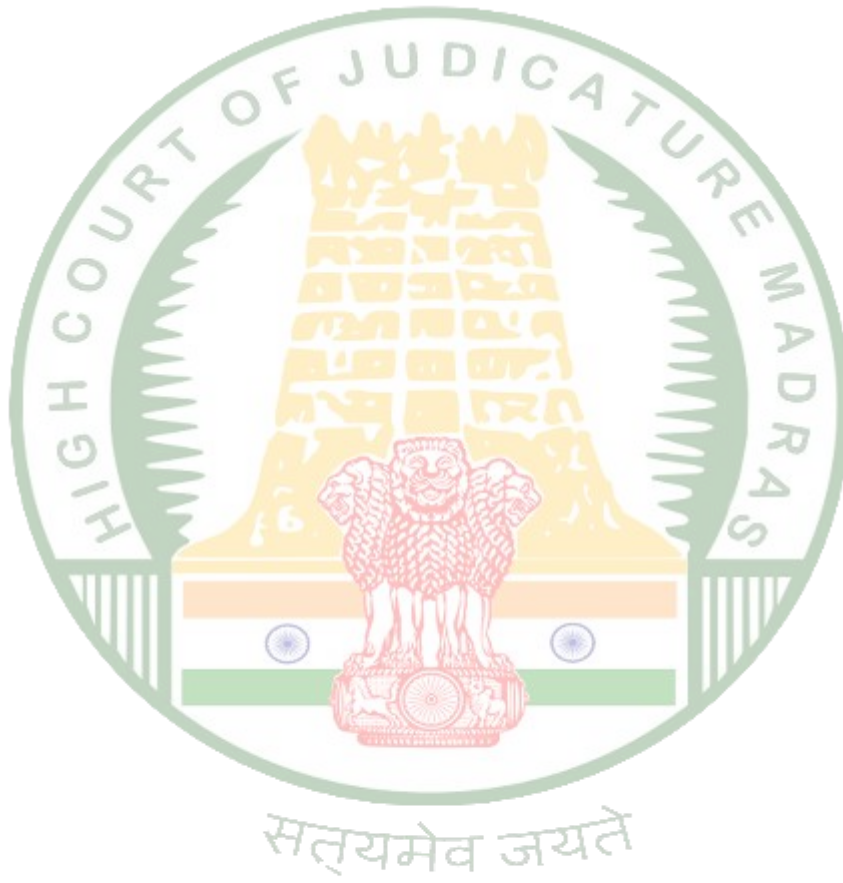
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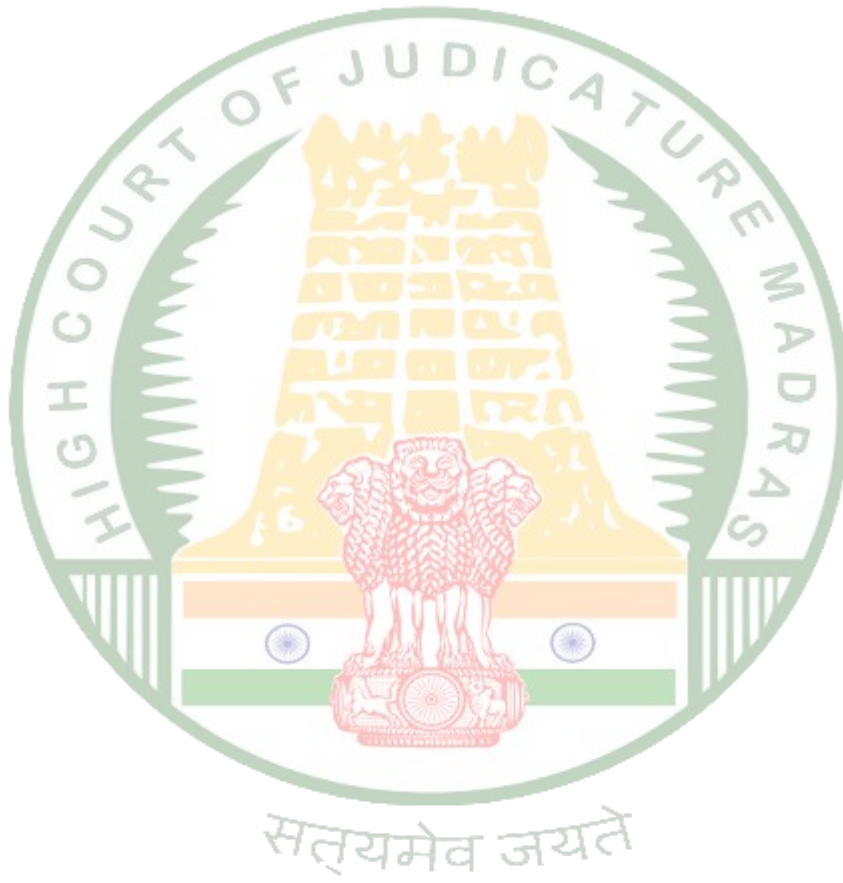
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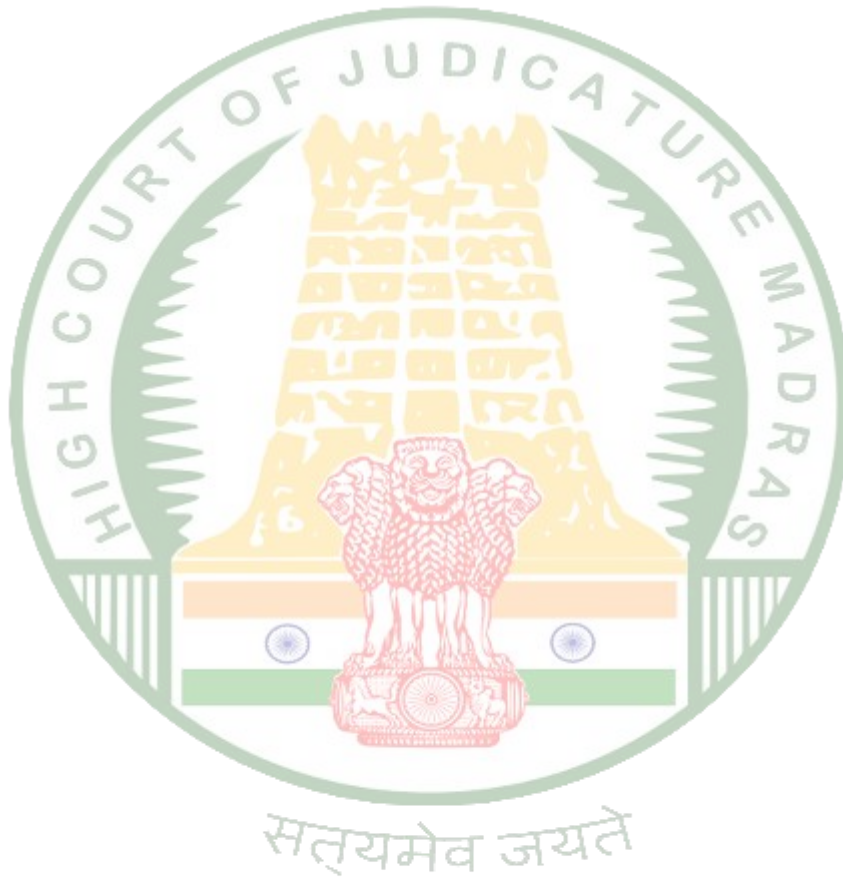
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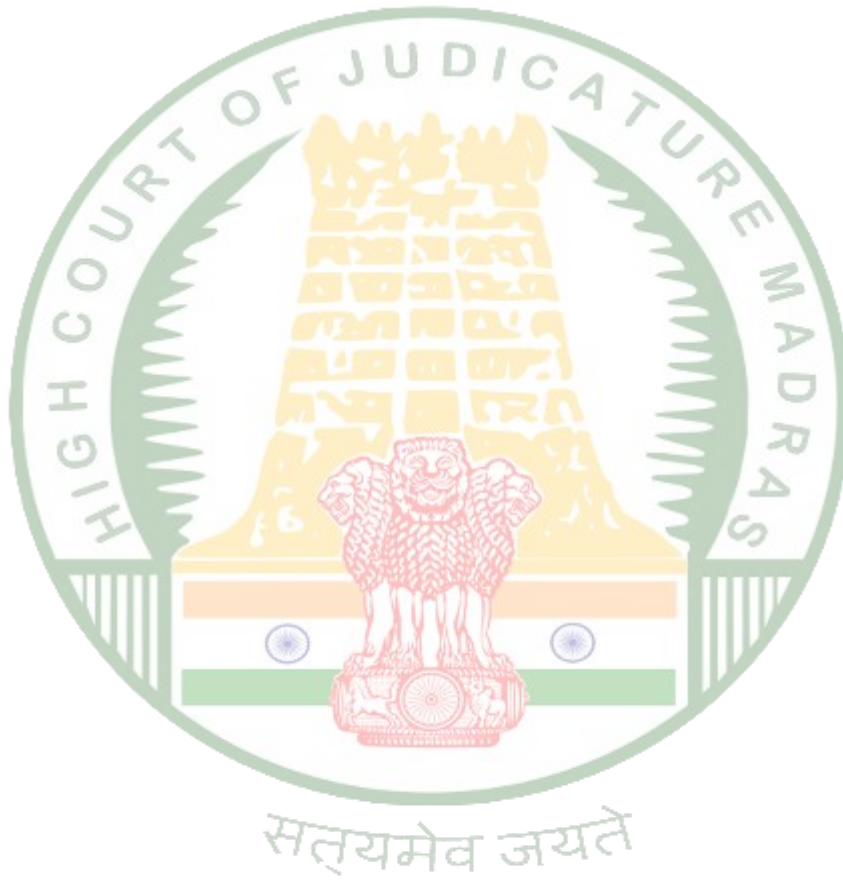
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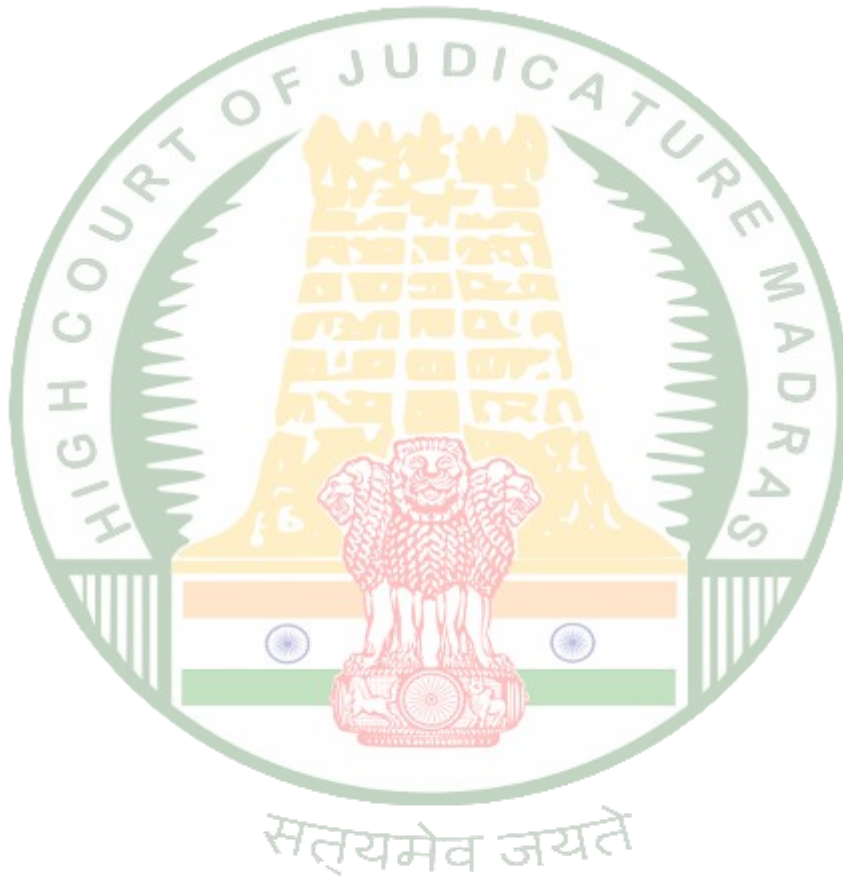
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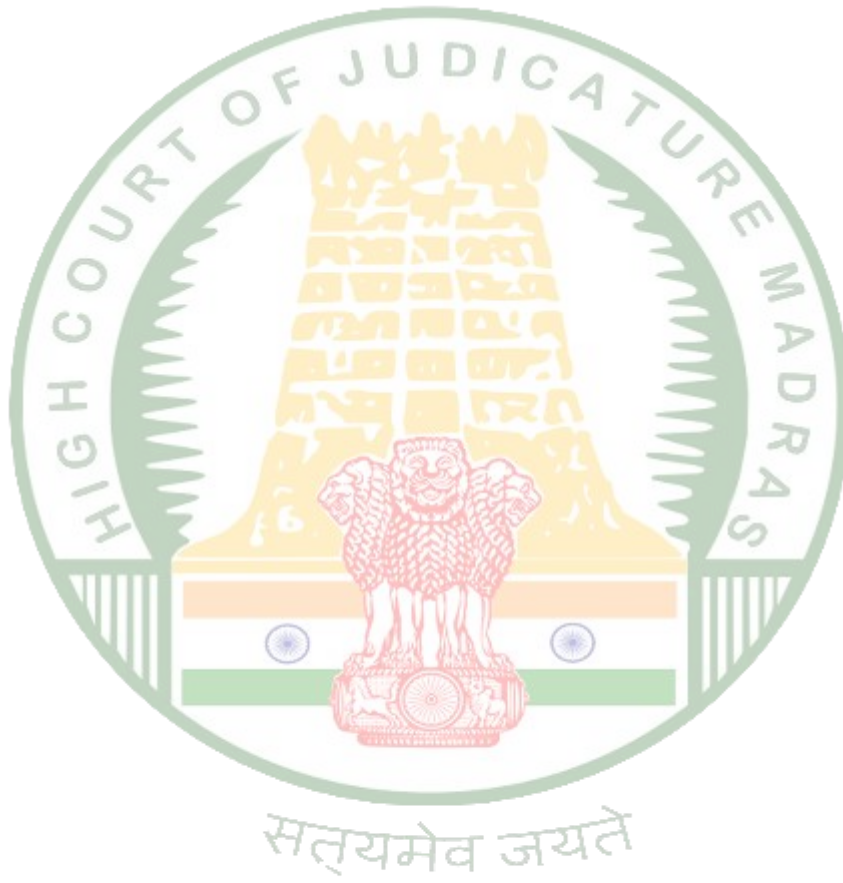
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The brief facts of the case is as follows.

The petitioner was elected as President of the third respondent's society and assumed Office on 08.05.2013. While that being the position, the first respondent served notice dt 25.05.2014 along with the copy of the requisition letter dated 15.05.2014 submitted by the nine elected members of the third respondent society to convene a special meeting of the Board of Directors and facilitate moving a No Confidence Motion against the Writ petitioner.

The second respondent served a notice dated 17.06.2014 informing the petitioner convening of special meeting of the Board of Directors to be held on 23.06.2014. The aforesaid notice was received by the petitioner on

20.06.2014. Under the rule 62 (3) of the Tamil Nadu Cooperative Societies Rules, a special meeting of the Board of the society for consideration of resolution expressing No Confidence Motion in the office bearer should be conducted within 30 days from the receipt of such requisition from the elected members. Therefore, in the present case, the date fixed by the respondents is beyond the prescribed time under rule 62 (3) of Tamil Nadu Co-operative Society Rules.

On receipt of such notice, the Writ Petitioner submitted his explanation on 02.06.2014. In pursuant to the receipt of the reply submitted by the petitioner, the first respondent has authorised the second respondent to convene a special meeting to discuss No Confidence Motion moved by the Board of Directors to be held on 23.06.2014 at 05.45 p.m. in the Office of the society.

Challenging the impugned order dated 17.06.2014 the petitioner has filed the present Writ Petition before this court. The learned counsel for the petitioner would submit that the petitioner has raised the grounds in the present Writ Petition challenging the impugned notice that the proceedings initiated by the respondents are forged mainly on the ground that those violation of rule 62 (3) of the Tamil Nadu Co-operative Societies Rules 1988.

According to the counsel for the petitioner, by relying on the rule 62 (3) of the Tamil Nadu Co-operative Societies Rules 1988 which reads as follows.

The aforesaid such rule mandates that on receipt of any requisition, the registrar shall arrange to convene a special meeting of the board of the society within 30 days from the receipt of such requisition. Further, it also mandates that there shall be a three clear days notice shall be given to convene a special meeting of the Board.

The learned counsel for the petitioner would reliance on the said rules and submitted that so far as the present case is concerned, the respondents has not followed the said rules complied with the requirement of time prescribed in the said rule. According to the Writ Petitioner, the requisition in moving the No Confidence against the Writ Petitioner letter dated 15.05.2014, the same was received by the first respondent on 27.05.2014.

The first respondent appointed the second respondent Thiru.K.Somasundaram to convene a special meeting of the Board for the removal of the petitioner from the post of Vice-President through No Confidence Motion. The second respondent has issued the notice on 17.06.2014 to convene the special meeting of the Board to be held on 23.06.2014 at 05.45 p.m. and was issued on 17.06.2014 and the aforesaid notice was received by the Writ Petitioner on 20.06.2014. The Writ Petitioner also, in support of his contention, placed before this court the meaning of clear days which was proposed in Law Lexicon is useful to extract the said definition of clear days means, in any case, in any particular, number of days

no expressed to be clear days is prescribed by the rules of the Supreme Court. The same shall be reckoned, exclusively on the first day and inclusively on the last day. The counsel for the petitioner has relied upon the decision of the Delhi High Court in the case of Bharat Kumar Dilwari Vs Bharat Carbon & Ribbon Mft. Ltd dated 09.12.1971 = --- equivalency ILR 1972 Delhi 837 wherein it was held that, the --- not less than 21 days notice means not less than 21 clear days, exclusively of the day of service of the notice and exclusively of the day meeting is held. ----- decision has been relied by the Counsel for the petitioner in the case of Kamal Sharma Vs. State of UP and Others in in WRIT - C No.9763 of 2013 dated 05.10.2013. The aforesaid decision which was held that the both days, namely initial days and last day are excluded for reckoning the clear 15 days notice as per the Section 87-A (3) of the U.P Municipalities Act, 1916. Hence, the learned counsel for the petitioner, on contrary, the learned Special Government Pleader would submit that the contention of the Board of Directors of the society was elected in the month of April 2013. 13 Directors were elected by the members of the society and the Petitioner were elected as Vice President of the Society. There was a conflict between the Petitioner and the rest of the members of the Board. Hence, the 9 members of the Board send a requisition letter on 15.05.2014 requesting the first respondent to remove the Petitioner from the post of Vice-President by bringing No Confident Motion.

On receipt of the said requisition letter, the first respondent has sent a

copy of letter received from the aforesaid 9 members of the Board of the Society to the petitioner and requested him to officer his remarks within 7 days of receipt of said letter dated 09.05.2014.

As per rule 62 (2) of Tamil Nadu Co-operative Society Rules, on receipt of the such letter, the petitioner has replied by his letter dated 02.06.2014 and the same was received on 06.06.2014 by the first respondent. The first respondent, as per the provisions of the rule 62 (4) of Tamil Nadu Co-operative Society Rules 1988, authorised the second respondent Thiru.K.Somasundaram, in his order dated 16.06.2014 to conduct and preside over the special meeting on the basis of the requisition letter made by the Board of Directors.

The second respondent despatched such notice on 17.06.2014 by registered post and the same was served to the Writ Petitioner on 20.06.2014, for the meeting to be held on 23.06.2014. Hence a four clear days of the meeting as laid ---- in 62 (3) of the Co-operative Society Rules.

The learned counsel for the third respondent would submit that, in similar circumstances, the rule 62 (3) of the Co-operative Society Rules is parimeter to Section 27 (3) of Mysore Town Municipalities Act 1951, wherein the Supreme Court has considered the similar issue in the case of K.Naramimhiah, Appellant Vs. H.C.Singri Gowda and other AIR 1966 page 330, the reliance paragraph No.11, 18, 19 and 20 which was held as follows.

“Giving” of anything as ordinarily understood in the English language is not complete unless it has reached the hands of the person to

whom it has to be given. In the eye of law however “giving” is complete in many matters where it has been offered to a person but not accepted by him. Tendering of a notice is in law therefore giving of a notice even though the person to whom it is tendered refuses to accept it. We can find however no authority or principle for the proposition that as soon as the person with a legal duty to give the notice despatches the notice to the address of the person to whom it has to be given, the giving complete. We are therefore of opinion that the High Court was wrong in thinking that the notices were given to all the Councillors on the 10th of October. In our opinion, the notice given to five of the Councillors was of less than three clear days.

It is interesting to notice in this connection that the English law as regards meetings of borough council and country councils contain a specific provision that want of service of a summons to attend the meeting (which is required to be served on every member of the council) will not affect the validity of the meeting. It may be presumed that the legislature which enacted the Mysore Town Municipalities Act 1951, was aware of these provisions in English law. It has not gone to the length of saying that the failure to serve the notice will not make the meeting invalid. It has instead said that any irregularity in the service of notice would not make a resolution of the Council invalid provided that the proceedings were not prejudicially affected by such irregularity. The logic of making such a

provision in respect of irregularity in the service of notice becomes strong if the fact that the notice given was short of the required period is considered an irregularity.

The existence of this provision in S.36 is a further reason for thinking that the provision as regards any motion or proposition of which notice must be given in S.27 (3) is only directory and not mandatory.

We are, therefore, of opinion that the fact that some of the Councillors received less than three clear days' notice of the meeting did not itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. On these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice".

The decision has been relied by the counsel for the third respondent in the case of Smt.K.Sujatha Vs.The Government of A.P.and another reported in AIR 2004 ANDHRA PRADESH 400. In paragraph 27, 28 has been extracted as follows.

The ordinary meaning of the word 'notice' is knowledge, information or announcement. Therefore, the purpose and object of issuing the notice is to give due intimation of the proposed meeting of no confidence motion to

all the members of the Panchayat or Mandal Parishad or Zilla Parishad and to make it possible for the members to adjust their work in such a manner so as to enable them to attend the proposed meeting of no confidence motion. Once the member receives intimation, he is not required to make any further preparation for the purpose of meeting except by making himself available in the meeting. Rule 8 says that the proposed motion will be put to vote without any debate and voting would be by show of hands. In case no preparation is required to be presenting himself in the meeting, whether the member gets shorter period of time than fifteen days or not is irrelevant and meaningless. Had some discussion to take place or debate to follow, the matter would have been slightly different. Even the submission that holding the rule to be mandatory might lead to a situation of certain members interested scuttling the purpose is of no relevance in as much as in case a section of members is interested to scuttle the motion, the purpose can be served differently. Mere causing delay in accepting the notice within the requisite period of fifteen days is not the only mode of scuttling the meeting. Such section of the members can conveniently avoid attending the meeting so as to ensure that quorum is not complete when meeting is called to order, because as per Rule 7 of the rules if within two hours there is no quorum, the notice shall stand lapsed.

The purpose and object of giving notice of consideration of no

confidence motion is only to give due intimation to the members or information of the proposed meeting. Therefore, the fact that a member has got a shorter period of notice than fifteen clear days from the date of receipt of the notice would not matter. When notice is sent by post and the law permits the date of sending of notice to be treated as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid. It is only in the eventuality of prejudice being shown that the meeting or the proceedings taken thereunder can said to be invalid. The Legislature has rightly not provided in the rule that non-compliance of any shortfall in the notice would render the meeting or the proceedings taken thereunder to be invalid. Had that been the intention, the Legislature, obviously, would have provided since the law had been clearly settled by the time the Act was enacted and the Rules were framed by the judgment in Narasimaiah's case (AIR 1966 SC 330). In that view of the matter, we are of the opinion that the ratio of the judgment of the Division Bench of this Court laid down in Anandareddy's case that non-service of notice of fifteen clear days would make the meeting and the proceedings taken thereunder null and void cannot

be said to be the correct law.

In the light of the aforesaid decision of the court, the learned counsel for the third respondent would submit that the provision under rule 62 (3) of Tamil Nadu Co-operative Society Rules has been complied by the respondents. Therefore, the contention of the petitioner is liable to be rejected.

By considering the rival submissions made by the counsel for the parties, the points raised by the petitioner in the Writ Petition, respondent one and two has not followed the rule 62 (3) of the Tamil Nadu Co-operative Societies Rules. The first contention of the counsel for the petitioner ----- Rule 62 (3) extracted

Removal of an elected Office bearer

- (1) An elected officer-bearer -----
- (2) No special meeting of the board -----

(3) As soon as such a requisition is received, the Registrar shall communicate a copy of the requisition to the office-bearer concerned, calling upon him to make his representations, if any, within such time as may be specified by him. The Registrar shall, within thirty days from the date of receipt of such requisition arrange to convene a special meeting of the board of the society, for consideration of the resolution expressing no confidence in the officer-bearer for which not less than three clear days' notice shall be given. A copy of gist of the requisition

and of the representation, if any, received from the office-bearer concerned shall also be sent to the members along with the notice for the special meeting of the board'.

So, the above mentioned rule 62(3), the Registrar shall, within thirty days from the receipt of such requisition, arrange to convene such meeting of the Board of the Society. The present case is concerned, the nine members of the Board of Directors sent a letter to the first respondent on 15.05.2014. On receipt of such notice, first respondent by his letter in R.C.No.1470/2014/pa.sa.1 dated 29.05.2014 has requested the petitioner to offer his explanation within 7 days from the receipt of letter. Accepting the aforesaid letter, the petitioner submitted his explanation on 02.06.2014. The first respondent has authorised the second respondent to conduct and preside over the special meeting on the basis of the requisition made by the members of the Board of Directors under Rule 62 (4) of the Tamil Nadu Co-operative Societies Rules 1988. Under Rule 62 (3), as special meeting shall be conducted within one month from the date of receipt of such request, the authorised officer issued a notice on 17.06.2014 to all the members of the Board informing the special meeting to be conducted conducted on 23.06.2014 at 05.45 p.m.

On perusal of the records, requisition letter received from the members of the Board on 27.05.2014 by the first respondent. On receipt of such requisition, the first respondent has authorised the second respondent to

conduct and preside over the special meeting to be conducted for the purpose of removal of the Office Bearer. The second respondent issued notice dated 17.06.2014 informing the special meeting to be held on 23.06.2014.

Hence, it has been rightly contented by the counsel for the respondents that as per the rule, respondent has convened the meeting within 30 days from the date of receipt of requisition made by the Board of Directors.

The counsel for the petitioner has not produced any material for the contradist before this court submitted filed by the respondents. In so far as the other contention of the counsel for the petitioner that not less than 3 clear days notice shall be given to the members. In the present case, according to the petitioner, the said notice was received; there is no three clear days notice as contemplated under the rules. Therefore, the petitioner relied upon the decision of the Kamal Sharma case:- WRIT - C No.9763 of 2013 dated 05.10.2013 --- Allahabad High Court has hold that time must be reckoned excluding both the day of the act and that of the event, has contemplated under section (14) of the U.P. Panchayat Raj Act 1947, Sub-Section (14) where time was reckoned excluding both the day of the act and in computing 15 days both the first and the last days have to be excluded.

Hence, the days both the first and last days have to be excluded. The petitioner relying upon the law, three clear days means ----

The decision relied by the learned counsel for the third respondent in the case of K.Narasimhiah Vs.H.C.Singri Gowda and other reported in AIR 1966

(SC) 330, where the Hon'ble Supreme Court and in the other case of Smt.K.Sujatha, Petitioner Vs The Government of A.P and another reported in AIR 2004 ANDHRAPRADESH 400 the purviews and objects of giving notice of consideration of No Confidence Motion is only together due intimation to the members or information of the proposed meeting.

Hence, the Full Bench of the AP has held that notice is sent by the post and law permits, consent of notice to be treated and 15 days clear notice would mean that there shall be 15 days from the date of service of the notice till the date of meeting excluding the date of service of notice and the date of such proposed meeting of motion. Therefore the contention of the petitioner that three clear days from the receipt of notice cannot be accepted. Contemplate

By taking into consideration, calculating the date of despatching notice in the present case and the special meeting convened by the second respondent would clearly shows that three clear days notice is contemplated under the rule 62 (4) of the Tamil Nadu Co-operative Societies. Hence, the facts of the case where the contention of the petitioner --- Writ petition is rejected. Therefore, no cause is made out by the petitioner. Hence, the Writ petition is liable to be dismissed. No costs.

To

1. The Deputy Registrar of Cooperative Societies (Credit), Kuralagam, Chennai 600 108
2. The Co-operative Sub-Registrar/ Authorised Officer for conducting Special Meeting of the Board, Secretariat Staff Co-operative Society Ltd., Chennai - 600 009.
3. The Tamil Nadu Secretariat Staff Cooperative Society Ltd., rep.by its Managing Director, Secretariat, Fort St.George, Chennai - 600 009



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