



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2018

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Review Applplication (MD) Nos. 15 to 19 of 2018
in
Writ Appeal (MD) Nos.1273 to 1277 of 2016 and
WP(MD) Nos.12125 to 12129 of 2014

Orders reserved on 03.08.2018	Orders pronounced on 31.08.2018
----------------------------------	------------------------------------

P. Krishnamoorthy	.. Applicant in Rev.Aplc.(MD) No.15/2018
P.Santhanakrishnan	.. Applicant in Rev.Aplc.(MD) No.16/2018
P.Thanda Kudumban	.. Applicant in Rev.Aplc.(MD) No.17/2018
E.Ponnusamy	.. Applicant in Rev.Aplc.(MD) No.18/2018
V.Perumal	.. Applicant in Rev.Aplc.(MD) No.19/2018

-vs-

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Nungambakkam High court,
Chennai - 600034.
2. The Joint Commissioner,
Hindu Religious & Charitable
Endowments Department, Madurai.
3. The Executive Officer,
Arulmigu Vigneshwarar
Vagaiyara Thirukovil,
Old Ayakudi, Palani.
4. The Inspector,
Hindu Religious & Charitable
Endowments Department,
Devasthanam Chathiram,
Railway Feeder Road, Palani.



Common Prayer:- Review Applications filed under Order 47, Rules 1 and 2 read with Section 114 of Civil Procedure Code, to review the judgment passed by this Hon'ble Court in W.A.(MD) Nos. 1273 to 1277 of 2016 dated 08.11.2017 and allow the present Review Application.

Prayer in WA(MD). 1273/ 2016 :

To present this memorandum of appeal against the order passed in W.P.(MD).No.12125/2016 dated 17.08.2016 in so far as it is against the appellant.

Prayer in WA(MD). 1274/ 2016 :

To present this memorandum of appeal against the order passed in W.P.(MD).No.12126/2016 dated 17.08.2016 in so far as it is against the appellant.

Prayer in WA(MD). 1275/ 2016 :

To present this memorandum of appeal against the order passed in W.P.(MD).No.12127/2016 dated 17.08.2016 in so far as it is against the appellant.

Prayer in WA(MD). 1276/ 2016 :

To present this memorandum of appeal against the order passed in W.P.(MD).No.12128/2016 dated 17.08.2016 in so far as it is against the appellant.

Prayer in WA(MD). 1277/ 2016 :

To present this memorandum of appeal against the order passed in W.P.(MD).No.12129/2016 dated 17.08.2016 in so far as it is against the appellant.

Prayer in WP(MD). 12125/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned orders in Se.Mu.Na.Ka.No.2578/2016/Aa1-1 as well as the consequential order in Se.Mu.Na.Ka.No. 2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

Prayer in WP(MD). 12126/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned orders in Se.Mu.Na.Ka.No.2578/2016/Aa1-2 as well as the consequential order in Se.Mu.Na.Ka.No. 2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

Prayer in WP(MD). 12127/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned orders in SE.Mu.Na.Ka. NO. 2578/2016/Aa1-2 as well as the consequential



order in Se.Mu.Na.Ka.No. 2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

Prayer in WP(MD). 12128/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned orders in Se.Mu.Na.Ka.No.2578/2016/Aa1-2 as well as the consequential order in Se.Mu.Na.Ka.No. 2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

Prayer in WP(MD). 12129/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records relating to the impugned orders in SE.Mu.Na.Ka. NO. 2578/2016/Aa1-2 as well as the consequential order in Se.Mu.Na.Ka.No. 2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

For Applicants : Mr.T.L.Ram Mohan,
Senior Counsel
assisted by M/s.G.Sumithra &
M/s.J.Anandhavalli

For RR1, 2 and 4 : Mr.V.R.Shanmughanathan,
Special Government Pleader

For R3 : Mr.M.Muthugeethayan

COMMON ORDER

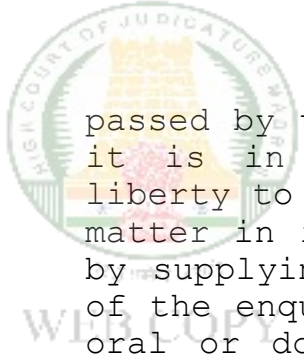
[Order of the Court was made by T.S.Sivagnanam, J.]

These review applications have been filed to review the judgement and order in Writ Appeal (MD) Nos.1273 to 1277 of 2016 dated 08.11.2017.

2.The review applicants were the appellants in those appeals, which were filed challenging the common order in W.P.(MD) Nos.12125 to 12129 of 2016 dated 17.08.2016 filed by the applicants. The applicants filed the said writ petitions challenging the orders passed by the second respondent herein namely, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai dated 20.06.2016 superseding the Board of Trustees (applicants) of Arulmigu Vigneshwarar Vagaiyara Temple, Old Ayakudi, Palani and three other sub-temples. The other impugned order in the Writ Petitions was also dated 20.06.2016 appointing the 4th respondent herein as the fit person of the temple to take over its administration.

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

3. The writ petitions were allowed, setting aside the order



passed by the second respondent dated 20.06.2016 on the ground that it is in violation of principles of natural justice, granting liberty to the second respondent to pass fresh orders in the subject matter in issue by providing adequate opportunity to the applicants by supplying the copies of the documents prior to the commencement of the enquiry and if the applicants are desirous of letting in any oral or documentary evidence, direction was issued to the second respondent to permit them and thereafter, the second respondent to pass a reasoned, speaking order afresh on merits, by adverting to the observations/points raised assigning necessary reasons independently and by scrupulously following the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act") and its Rules. The applicants were given liberty to raise all factual and legal pleas before the second respondent in the manner known to law and in accordance with law.

4.The writ petitioners filed Writ Appeal (MD) Nos.1273 to 1277 of 2016 before the Division Bench being largely aggrieved that the proceedings initiated by the second respondent were not quashed on the ground of total lack of jurisdiction. Parallely, the Department was aggrieved by the findings rendered by the Writ Court that a full-fledged enquiry is required to be conducted by the second respondent before passing an order of supersession, though the proceedings are summary in nature. Therefore, the Department and the fit person filed Writ Appeal (MD) Nos. 1247 to 1251 of 2016. The appeals were clubbed together and were heard by us on several dates and by the impugned judgement dated 8.11.2017, we allowed the appeals filed by the Department namely, Writ Appeal (MD) Nos. 1247 to 1251 of 2016 and dismissed the appeals filed by the applicants in Writ Appeal (MD) Nos.1273 to 1277 of 2016. We granted liberty to the applicants to prefer an appeal as against the order of supersession dated 20.06.2016, before the first respondent and granted them 30 days time to do so and if such appeal is filed within the time permitted, the first respondent was directed to decide the matter on merits and pass orders in accordance with law. Admittedly, the applicants have not preferred appeal by availing the liberty granted by us in the impugned judgement.

5.Mr.T.L.Ram Mohan, learned Senior Counsel, assisted by M/s.J.Anandavalli and M/s.G. Sumithra, learned counsels for the applicants, by referring to the show cause notice dated 02.05.2016 and the order impugned in the writ petitions dated 20.06.2016, submitted that in the subject column, the notice as well as the order state that it is a disciplinary action initiated against the applicants and if it is so, the power under Section 53 of the Act alone could have been invoked and not Section 26 as done by the Second respondent. It is submitted that Section 53 of the Act is a special provision, which confers power on the appropriate authority to suspend, remove or dismiss trustees in contradistinction with the power under Section 26, which is a general power of disqualification of trustees.



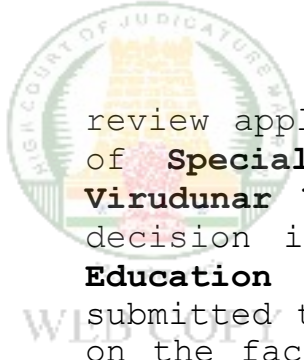
6. Referring to the decision of the Hon'ble Division Bench of this Court in the case of **S.Chockalingam Poosari and Others vs. S.V.Ramasamy** reported in **AIR 1977 Madras 169**, it is submitted that a 'hereditary trustee' is differentiated from a trustee with reference to the origin of his right to hold the office, which is not by appointment, but by succession or hereditary right or by usage. It is further submitted that having regard to this speciality with reference to hereditary trustee, a Board of Trustees can be constituted by the Commissioner for a non-listed temple, but for a temple having a hereditary trustee, he can exercise power of appointment of other trustees only after following the other procedures laid down there. Therefore, it is submitted that the policy of law as found in the Act is to respect the right of a hereditary trustee to manage the institution. Thus, when the Board consists of hereditary trustees, Section 26(6) of the Act will have no application to such hereditary trustees.

7. The learned Senior Counsel referred to the provisions of Sections 47(4), 49(2), 53(6), 70 and 90(4) of the Act to bring out the distinction between a hereditary trustee and a non-hereditary trustee. It is submitted that in terms of sub-Section 6 of Section 53, a hereditary trustee aggrieved by an order passed by the Commissioner or the Government under sub-Section (5) of Section 53, which may be an order of suspension, removal or dismissal, may institute a suit in Court against such order. Thus, it is the submission of the learned Senior Counsel that when a special provision is in existence in the form of Section 53, the general provision namely, Section 23 cannot be invoked.

8. Referring to the decision of the Hon'ble Supreme Court in **J.K.Cotton Spinning and Weaving Mills Co. Ltd. vs. State of U.P.**, reported in **AIR 1961 SC 1170**, it is submitted that, when there is a conflict between a special provision and a general provision, the special provision prevails over the general provision and the general provision applies only to such cases, which are not covered by special provision. Therefore, it is submitted that if at all action was required to be taken, it could have been done only under Section 53 of the Act.

9. Further, it is submitted that Section 53(6) of the Act gives liberty to the hereditary trustee to challenge an order under sub-Section (3) of Section 53 of the Act by filing a suit and this power, being more beneficial power, confers on the hereditary trustee rather than regular statutory appeal. Such power, which is beneficial to the hereditary trustee, ought to have been invoked. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Jiwani Kumar Paraki vs. First Land Acquisition Collector, Calcutta and Others** reported in **(1984) 4 SCC 612**.

10. With regard to the power of this Court to entertain this



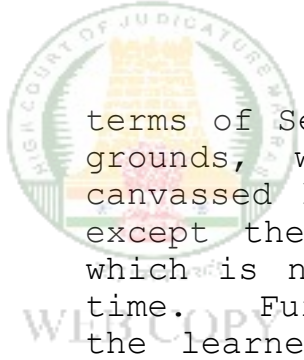
review application, reliance was placed on the decision in the case of **Special Tahsildar, (Land Acquisition), Master Plan Complex, Virudunur Vs G. Rajendra Bose** reported in 1995-2-L.W.901 and the decision in the case of **Baskaran Vs The Commissioner of College Education and 2 Others** reported in 1995 (II) CTC 513. It is submitted that in view of the errors, which are manifestly apparent on the face of the impugned judgement, the review applications are maintainable.

11. Further, it is submitted that the order impugned in the writ petitions dated 20.06.2016, appointing a fit person, is without jurisdiction, as there is no such power under Section 26(4), as the statute makes it clear that on and after supersession of the trustees, automatically, Section 54 comes into play and there is no power to appoint a fit person. The learned Senior Counsel further pointed out that there are factual errors in the charge and the applicants had obtained information under the Right to Information Act, 2005 which would show that no inquiry was conducted on 30.03.2016 as stated in the order dated 20.06.2016, as the second respondent did not leave his Headquarters.

12. M/s. J. Anandavalli, learned counsel for the applicant while supplementing the arguments of the learned Senior Counsel, elaborately referred to the allegations which ultimately led to the passing of the order dated 20.06.2016 and submitted that all the allegations came to light pursuant to the audit objections raised by the Audit Wing, which clearly show that all allegations are against the Executive Officer and not against the hereditary trustees. In such circumstances, the power under Section 90 of the Act, for rectification of defects disclosed in audit, alone could have been invoked and if it is found that there are defects, an order of surcharge could have been passed against the trustees, but not an order of supersession. Therefore, it is submitted that if at all, there has been any defalcation, which has been solely done by the Executive Officer, for which, the trustees cannot be penalised and no action could have been initiated for supersession of the Board of Trustees under Section 26 of the Act.

13. Mr. V. R. Shangmugam, learned Special Government Pleader appearing for the respondents 1, 2 and 4 submitted that the impugned order in the writ petitions is an order under Section 26 of the Act and the show cause notice also clearly states that it is a show cause notice issued under Section 26 calling upon the applicants to show cause as to why the Board of Trustees of the temple should not be superseded. Therefore, by referring to the word 'disciplinary action' referred in the subject column of the show cause notice, the order of supersession should be read to mean a disciplinary action under Section 26 of the Act, which is explicit in the order dated 20.06.2016.

14. Further, it is submitted that any person, aggrieved by such order, is entitled to file an appeal before the first respondent in



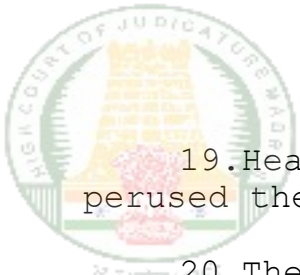
terms of Section 26(5) of the Act. It is further submitted that the grounds, which are canvassed in the review applications were canvassed before the Division Bench, when the appeals were heard except the information under the Right to Information Act, 2005 which is now sought to be placed before this Court for the first time. Further, it is submitted that all grounds were urged before the learned Single Bench as well as the Division bench and the judgement has been passed and there is no error, which is apparent on the face of the order to invoke the review jurisdiction.

15. Further, it is submitted that Section 26 of the Act speaks only of disqualification and the power to appoint a fit person is traceable to Section 54(3) of the Act, which is an interim arrangement pending decision of an application under Section 54(1) of the Act, which admittedly has not been made till date and therefore, there cannot be any vacuum and the appointment of the fit person is legally valid.

16. Mr. M. Muthugeethayan, learned counsel for the third respondent/Executive Officer of the temple submitted that even during the pendency of the writ petitions, the fit person has taken charge over the affairs of the temple and he is continuing to discharge his function in view of the interim order of status-quo granted and till date, he is functioning as the fit person. Further, it is submitted that though liberty was granted to the applicants to file an appeal under Section 26(5) of the Act stipulating a time limit, the applicants have not availed the opportunity and no appeal has been filed. Further, the learned counsel referred to certain portions of the impugned judgement and in particular, paragraph nos. 34 and 53 there in, and emphatically submitted that all submissions were dealt with and the present applicants cannot seek to re-argue the cases by engaging a different counsel and alleging that points were not considered.

17. Relying upon the decision of the Hon'ble Supreme Court in the case of **Kamalesh Verma vs. Mayavati and Others [(2013) 8 SCC 320]**, it is submitted that change of counsel is no ground to review a judgement. It is further submitted that the trustees and the erstwhile Executive Officer had encashed the fixed deposits much prior to the date of maturity and there were other serious charges which ultimately led to the order of supersession.

18. The learned counsel referred to the Functioning of the Board of Trustees Rules in particular, Rule No. 14 and submitted that all matters relating to administration of the religious institution shall be decided at the meetings of the Board of Trustees and the Executive Officer shall carry out the decisions of the Board. Therefore, the Board of Trustees were responsible for all the defalcations and therefore, there is no error apparent on the face of the impugned judgment.

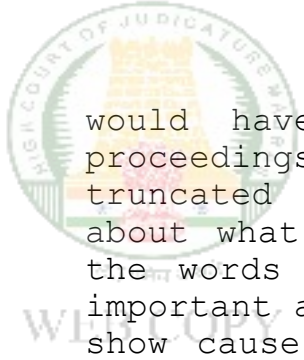


19. Heard the learned counsels for the parties and carefully perused the materials placed on records.

20. There are long line of decisions, which have elaborately dealt with what is an error apparent on the face of the records. It has been held that such error must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where they may conceivably be two opinions. If there is a serious irregularity in the proceeding such as violation of principles of natural justice, a review application can be entertained. If a mistake is committed by an erroneous assumption of a fact, which is allowable to stand, would cause misreading of justice, then also an application for review can be entertained. Therefore, we are required to first ascertain as to what is an error, which is so apparent on a reading of the judgement and would not require any long-drawn process of reasoning.

21. Before we venture to deal with the same, we wish to point out that the appeals were heard elaborately and the applicants were represented by the counsel of sufficient standing, though not designated as a senior advocate. We recall that all issues were raised, discussed and arguments made threadbare by the counsels on either side. It is thereafter, we reserved the judgement in the appeals. Thus, as rightly pointed out by the learned counsel for the third respondent, change of counsel will not be a ground to call upon us to have a re-look as to what we have decided in our judgment dated 08.11.2017. This is more so because, the new counsels can have no idea as to what are the grounds canvassed before the Court, when the matter was heard. At times, pleadings may be brief. A point of law might have been indicated in a precise manner, but during the course of arguments, the learned counsels will elaborate on such pleadings and grounds raised by referring to the factual matrix as well as relying upon precedents to buttress their arguments. Therefore, we would be well justified in observing that when there is a change of counsel, the new counsel is in a disadvantageous position, since they have no inkling of what was the manner in which the submissions were made, what were the queries raised by the Court, the answers given, etc.

22. Be that as it may, we are required to see as to whether the grounds raised before us are errors apparent on the face of the judgment. The first submission of the learned Senior Counsel is by referring to the preamble of the show cause notice and the order of supersession dated 20.06.2016. In our view, the interpretation sought to be given to the preamble / subject portion of the order appears to be an erroneous exercise, in the sense, the applicants seek to read the expression "ஒழுங்கு நடவடிக்கை" (disciplinary proceedings) to mean penal proceedings as contemplated under Section 53 of the Act. However, the subject column, as we all know, is a brief outline of what the proceedings or order is about. Thus, a person who reads the subject column of any order or proceedings



would have a fair idea about the content of such order or proceedings. However, the subject column cannot be read in a truncated fashion, but should be read as a whole to get an idea about what the contents of the order are. In our considered view, the words and figures which follow the words "ஒழுங்கு நடவடிக்கை" is important and germane, which refers to Section 26(h). Therefore, the show cause notice is one under Section 26(h) and the order is an order of supersession under Section 26 and therefore, the interpretation of the applicants that because it is a disciplinary action, Section 26 could not have been invoked as an argument, which does not merit consideration.

23. Having held so, the necessity to go into the aspect as to whether Section 26 is a general provision or whether Section 53 is a special provision does not arise, since if the interpretation given by the applicants ought to be accepted, it would be a misreading of the show cause notice and the order of supersession. In any event, this can never be an error apparent on the face of the record because the points were canvassed before the Division Bench and we have dealt with the case and delivered judgement. Having come to such a conclusion, we are not impressed by the submission made on behalf of the applicants that Section 53 alone should have been invoked, since it is a more beneficial provision to the trustees. What was proposed to be done and what has been done is an act of supersession, which can be done only under Section 26 of the Act. Therefore, we hold that there is no error apparent on the face of the judgement warranting exercise of review jurisdiction.

24. It was pointed out that the second order impugned in the Writ Petition dated 20.06.2016, appointing a fit person, is without jurisdiction. This point was canvassed and we have taken a decision against the applicants.

25. Needless to state that the power of appointment of a fit person is exercisable as an interim measure, so that the affairs of the temple are not jeopardised. Such power is available under Section 54(3) of the Act and the circumstances and contingencies under which the vacancy permanent or temporary carrying in the office of the hereditary trustee can be managed by appointment of a fit person, till the disability of the hereditary trustee seizes or another hereditary trustee succeeds to the office. In terms of sub-Section (1) of Section 54, when a permanent vacancy occurs in the office of the hereditary trustees of a religious institution, the next in the line of succession shall be entitled to succeed to the office for which an application is required. Admittedly, till date no application has been made by any person claiming a right to hereditary trusteeship of the said religious institution to appoint him in the vacancy caused on account of supersession of the Board of Trustees consisting of the applicants. Therefore, the order of appointing the fit person is perfectly legal and valid.



26.As rightly pointed out by the learned counsel for the third respondent, we dealt with this issue and pointed out that the power under Section 53 of the Act is a disciplinary power to be used by the appropriate authority to dislodge a trustee from his office or to keep him out of office by way of suspension or to remove him which involves civil consequences and precisely for such reason, a procedure has been contemplated under Section 53(3) while proposing to take action under sub-Section (2) of Section 53. Therefore, we held that the power under Section 53 should not be mixed with the power under Section 26 of the Act.

27.The Learned Senior Counsel referred to the information secured by the review applicant Thiru. P. Krishnamoorthy under the Right to Information Act, 2005, with regard to the place of duty of the second respondent on 30.03.2016, on which date, he is stated to have conducted an inspection. The reply given by the Public Information Officer vide letter dated 24.03.2017 states that he has been in the headquarters taking care of official work and in the afternoon, he conducted an inquiry with regard to encroachments, which are quasi judicial proceedings. Therefore, it is submitted that no enquiry was conducted on 30.03.2016.

28.Firstly, this information under the Right to Information though having been obtained by the applicant P.Krishnamoorthy, on 24.03.2017, was not placed before the Court when we heard the Writ Appeals in June 2017. That apart, the nature of query raised by the applicant before the Public Information Officer was not placed before the Court when we heard the Review Applications. On 16.08.2018, learned counsel for the applicants mentioned in the Chambers of one of us (TSSJ) that Ms.J.Anandhavalli, learned counsel for the applicants has filed Additional Typed Set of Papers II before the Madurai Bench. It was represented that the typed set has not been placed before us. The learned counsel was directed to file the same before us. On perusal of the same, it is seen that the Additional Typed Set II is dated 09.08.2018, i.e., after we reserved orders on 03.08.2018. It contains two documents, petition dated 02.03.2017 under the Right to Information Act and documents obtained on 24.03.2017. The above documents have been relied on by the learned counsel for the petitioner to buttress the submission that the Joint Commissioner, who stated to have conducted enquiry, did not leave the headquarters. Admittedly, no such ground was raised by the applicants before the Writ Court. The submissions made by the applicants/Writ Petitioners in the Writ Petitions as well as in the Writ Appeals pertain to the jurisdictional issues. Thus, by way of fresh material, that too with the information furnished, we do not see any ground, much less an error on the face of our judgment to review the same. The applicants cannot dispute the settled legal position that a review application is not an appeal in disguise. Thus, for the above reasons, we find that the applicants have not made out any ground for exercise of review jurisdiction by this Court.



29. Accordingly, the review applications fail and they are dismissed. No costs.

WEB COPY

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-)

To

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
Nungambakkam High court,
Chennai - 600034.
 2. The Joint Commissioner,
Hindu Religious & Charitable
Endowments Department, Madurai.
 3. The Executive Officer,
Arulmigu Vigneshwarar
Vagaiyara Thirukovil,
Old Ayakudi, Palani.
 4. The Inspector,
Hindu Religious & Charitable
Endowments Department,
Devasthanam Chathiram,
Railway Feeder Road,
Palani.
- + 5 CC TO Mrs.J.ANANTHAVALLI, ADVOCATE IN SR Nos. 81841 to 81845
+ 1 CC TO Mr.M.MUTHUGEETHAYAN, ADVOCATE IN SR No. 81628

ABR/HVK/MRN
TE/SKN/SAR-1 : 27/09/2018 : 10P/11C

Rev.Appln.(MD) Nos. 15 to 19 of 2018
in W.A.(MD) Nos.1273 to 1277 of 2016
31.08.2018