BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.03.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA
W.P(MD)No.8224 of 2016
and
W.M.P.(MD)Nos.6689 of 2016 and 5002 of 2018

K.Manikandan : Petitioner

Vs.

1. The Union of India,
   Rep. by its Secretary,
   Ministry of Corporate Affairs,
   New Delhi.

2. The State of Tamil Nadu,
   Rep. by its Additional Chief Secretary,
   Industries Department,
   Fort St. George,
   Chennai - 600 009.

3. The Managing Director,
   Tamil Nadu Industrial Development Corporation,
   No.19A Rukmani Lakshmipathy Salai,
   Egmore, Chennai - 600 008.

4. The District Collector,
   Tirunelveli District,
   Tirunelveli.

5. AMRL Hi Tech City Ltd.,
   Rep. by its Chief Executive Officer,
   Nanguneri, Nanguneri Taluk,
   Tirunelveli District.

6. B.Ravikumar Reddy,
   Director,
   AMRL Hi Tech City Ltd.,
   No.46-1 C.M. Mohan Buildings,
   Tumkur Road, Yeswantpur,
   Bangalore - 560 022.

7. A.Mahesh Reddy,
   Managing Director,
   AMRL Hi Tech City Ltd.,
   Plot No.88, Sarikonda Mansion,
   Phase III, Kamalapuri Colony,
   Hyederabad - 560 073.

8. Attivo Special Exonomic Zone,
   Rep. by its Chief Executive,
   Mr.Indranil Das Gupta,
   Vishwakarma,
   No.86-C Topsia Road (South),
   Kolkata, West Bengal - 700 045.

9. Mr.T.K.Arun,
   Senior General Manager & Company Secretary, TIDCO,
   Residing at Block No.F1 Flat No.1,
   Baid Mehta complex,
   Mount Road, Chennai - 600 018.

10. Mr.N.Eswar Rao,
    President,
    AMRL Hi Tech City Ltd.,
    Nanguneri Taluk,
    Tirunelveli District.

11. S.R.E.I. Infrastructure Finance Limited,
    6A, Kiran Shankar Roy Road,
    Kolkatta, West Bengal. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the second respondent to take appropriate action on the illegalities committed by the Respondents 5 to 10 in respect of implementation of the Nanguneri SEZ and its financial dealing as stated in the petitioner's representation dated 11.02.2016 and consequently implement the Nanguneri SEZ project by calling for developer / promoters through Global Competitive Bidding Process.

For Petitioner : Mr.A.N.Ramanathan

For Respondent No.1 : Mr.N.Shanmuga Selvam

For Respondents 2 and 4 : Mr.A.K.Baskarapandian
Special Government Pleader

For Respondents 3 & 9 : Mr.Vijayan
for M/s.King & Partridge

(*)For Respondent No.5 : M/s.Veerakathiravan
Senior Counsel for Mr.K.Prabhakar

(*)For Respondent No.8 : Mr.T.Sakthikumaran

For Respondent No.10 : Mr.S.Karthikei Balan

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ORDER

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

This writ petition, styled as a "Public Interest Litigation" is filed by Thiru.K.Manikandan, who is a resident of Door No.28/48 Pandidurai IInd Street, Kulavanigapuram, Palayamkottai, Tirunelveli District and he claims that he is a practicing Advocate in Tirunelveli District and he has been actively participating in public legal and awareness programmes and also taking the cause of public people in his region at various levels and working towards the public welfare in all possible means.

2.The petitioner in the affidavit filed in support of this writ petition would aver as follows:

2.1.Nanguneri Special Economic Zone is a Multi Protect Special Economic Zone and initially an American Company wanted to set a Hi-Tech Park in Nanguneri, Tirunelveli. However, in view of passing of the Special Economic Zone Act, 2005, it was decided to convert the same as "Special Economic Zone (SEZ)". The Government, in this regard, had acquired around 2100 acres of land and it was given to M/s. ATMAC Ltd., through the third respondent namely, the Tamil Nadu Industrial Development Corporation (TIDCO), in the year 2001 and out of the said extent of land, around 575 acres are Poramboke and Government lands.

2.2.The second respondent vide G.O.Ms.No.429 dated 12.12.2002, permitted the third respondent to place the land which are the subject matter of SEZ at the disposal of the developer, subject to a condition that the financial closure should be met within the time stipulated therein and the project should also be commenced within the said period, failing which, it is open to the Government to repossess the land. The petitioner also expressed his grievance that despite such a condition, the developer could not do so and in this regard, the second respondent had also issued notices to the developer, calling upon them to implement the project and also threatening with the order of cancellation.

2.3.M/s.ATMAC Ltd., - the promoter entered into a joint venture agreement with the second respondent for developing a Multi Protect Special Economic Zone at Nanguneri Taluk, Tirunelveli District and the promoter had handed over the development to the fifth respondent, in which the sixth and seventh respondents were the Director and Managing Director respectively. The audit report of the Comptroller and Auditor General of India would also disclose that the third respondent had extended undue favour of Rs.106.61 Crores to the developers and the said amount has not been collected by the third respondent since 2008.

3.The primordial grievance expressed by the writ petitioner is that even after a lapse of 15 years, no development activities are happening in SEZ at Nanguneri and in this regard, Mr.S.Shanmugasundaram, Village Panchayat President, Rajakkalmangalam had filed W.P.(MD)No.6116 of 2013, before this Court praying for issuance of Writ of Mandamus directing the respondents to implement the said project, and further sought for appropriate direction to take back the allotted lands and issue fresh tender or return back the lands to the original owners from whom the possession was taken and a Division Bench of this Court after extracting paragraph No.21 of the counter affidavit filed by TIDCO has disposed of the writ petition on 10.02.2014.

4.The ninth respondent in the said writ petition, namely, TIDCO, who is arrayed as the third respondent herein has filed the counter affidavit and also took a stand that the amount was received through M/s. SREI Infrastructure Finance Ltd., [in short "SREI"], and is only a loan to the project and they have not participated in equity of the fifth respondent company and the said SREI has also given further loan of Rs.150 Crores in 2014 and taken over the project, by taking over the positions of Board of Directors of the fifth respondent. The fifth respondent has not even done the financial closure and as such the third respondent should have taken action to resume the land. However, it has not been done so.

5.It is also the specific case of the petitioner that not even a single penny has been spent towards development activities for the Nanguneri SEZ project and the same is also evidenced by the fact that the lands meant for the SEZ project still remain as vacant and barren lands and the fifth respondent has not even filed the audit report and also alienated about 1000 acres of land and are still owned by the third respondent without the approval and that huge sum of money was also diverted for personal gains. The sixth and seventh respondents had also given assurance that the fifth respondent is entering into Memorandum of Understanding (MoU) with very many big companies such as HCL, TVS and thereby huge employment opportunity would be generated which would benefit the people of Tirunelveli District, but, it remains only on paper and nothing had fructified into desirable results.

6.The nominated Directors of the third respondent Corporation has also been removed from the Board of Directors of the fifth respondent and the local Panchayat President of Therku Nanguneri village has filed W.P.(MD)No.3171 of 2016, before this Court and it was entertained and an interim order was passed restraining the fifth respondent from allotting the space earmarked for the Village Panchayat for maintenance of park and roads. The CEO of the the eighth respondent has also given a press interview that they have acquired SEZ by investing a sum of Rs.250 to 300 crores and that more than 1000 acres of Government lands have been transferred to the private respondents without permission of the third respondent and it is also the specific case of the petitioner that the eighth respondent started swindling also. The promoters also did not show any interest in development activities and continue to indulge in real estate speculations and in that process, siphoning the public money. The petitioner, pointing out the said instances, sought for appropriate enquiry and also submitted a representation dated 11.02.2016 to the respondents and despite receipt and acknowledgment, he has not received any kind of response and hence, came forward to file this writ petition.

7.Pendency of the writ petition, the writ petitioner also sought for interim orders.

8.The matter was admitted on 22.06.2016 and no interim orders were granted.

9.The second respondent has filed the counter denying the averments made in the affidavit filed in support of this writ petition and would aver that the Government of Tamil Nadu had established a separate electricity sub-station in five hectares of land and is in operation from 31.07.2013 and apart from the said amenity, 7 lakh litres of water, being arranged everyday by the Tamil Nadu Water and Drainage Board. It is further averred that the third respondent had also leased out 985 acres of land to the Joint Venture Company for the purpose of developing the SEZ project through a lease deed and as per the joint venture agreement executed on 10.04.2008, the third respondent has the right to nominate one Director on the Board of Directors of the Joint Venture Company and would further state that the said post remains vacant from 07.06.2011, since there was no whole time Chairman and Managing Director / Managing Director / Executive Director and as such, the nomination could not be made.

10.It is further averred by the second respondent that the lands were transferred only to the joint venture company namely, fifth respondent for the purpose of development of the project and not to any other company like the eighth respondent. The existing promoters, namely, the sixth and seventh respondents and their Associates had also submitted a proposal to the third respondent that SREI have agreed to develop the project further with the consent of the third respondent to induct them as a strategic equity partner with majority stake in the Company and also consent to divest their shares in favour of SREI and the third respondent in its meeting held on 13.03.2014, had accorded in-principle approval to induct the eleventh respondent as a strategic equity partner with majority stake in the project, subject to the quantum and the mode of investments to be finalized, for which further discussions to be held and the said decision was also informed by the third respondent on 20.03.2014.

11.The eleventh respondent vide communication dated 24.11.2015, has informed that the payment of differential cost does not arise as the cost of entire lands were already paid and settled and they also made a request for approval as strategic equity partner in the fifth respondent company and also for grant of consent to divest the shares held by AMRL Group in favour of the eleventh respondent for further development of the project.

12.The second respondent took a stand that the third respondent did not grant any final approval and it was also intimated to the fifth respondent on 10.08.2016 and the Government already proposed to initiate auction and prays for dismissal of the writ petition.

13.The third and ninth respondents had filed their counter and took a stand that the eleventh respondent has been sanctioned Rs.105 crores towards term loan for the purpose of development of the project only and as on date, they have been granted in-principle approval to the induction of eleventh respondent in the joint venture company subject to certain conditions and no finality has been reached and the third respondent did not grant any permission for the loan amount of Rs.155 crores and formal approval in connection with the induction of the eleventh respondent or have consent to the existing promoters viz., the sixth and seventh respondents. In paragraph No.20 of the counter affidavit, the third respondent took a stand that as of now, 28 companies have signed Memorandum of Understanding (MoU) for the allotment of land, of which MEPZ SEZ was granted permission for 20 units in order to set up the respective units in the SEZ and 10 units have commenced their production and as of 30.06.2016, the export generated from Nanguneri Special Economic Zone is Rs.422 crores (cumulative) and generated employment opportunity in favour of about 300 persons and prays for dismissal of this writ petition.

14.The fifth respondent has filed the detailed counter and took a stand that it is always committed to develop Nanguneri SEZ and worked hard at raising funds and till date, it had fully developed 250 acres of the allotted lands and fenced the allotted lands and developed roads and street lighting in parts of the SEZ as per the current requirement. The telecommunication facilities has also been given and it has started the construction of water reservoir in 2015 and the same is almost completed and leased out 12.36 acres of land to the Tamil Nadu Generation and Distribution Corporation (TANGEDCO) and they had also set up 110KV sub-station, which is currently in operation and provides electricity to SEZ project and also given the details in tabular column in paragraph No.43 and it is relevant to extract the same:

S. No.	Name of the Company	Date of Lease Deed	Unit – Operational/Under Construction/Closed
1.	M/s V.V.Mineral	15.07.2010	Operational
2.	M/s Transworld Garnet India Pvt. Ltd.	15.07.2010	Operational
3.	M/s Excel Hydro – Pnemmatics	15.10.2010	Operational
4.	Colloids & Coagulants (India) Pvt. Ltd.	09.03.2011	Operational
5.	Global Software Solutions (TVL) Pvt. Ltd.	09.03.2011	Closed and shifted
6.	M/s Haberl Bulk Containers	09.03.2011	Closed – litigation between partners
7.	M/s Fibrofilt Industries	15.06.2011	Project Report is being prepared
8.	M/s Great Shine Engineering Pvt. Ltd.	14.09.2011	Bhoomi pooja completed Construction works on the way.
9.	Kanam Latex Industries Pvt. Ltd.	20.10.2011	Awaiting Pollution Control Board's approval
10.	Kim Novax Industries Pvt. Ltd.	03.02.2012	Operational
11.	Lucky Impex	28.06.2012	Operational
12.	Bell Pins Pvt. Ltd.	11.10.2012	Discussions with GoTN for incentives
13.	Hansa Green Technology Pvt.	17.07.2013	Operational
14.	Sixth Element Global Pvt. Ltd.	13.02.2014	Construction is in progress
15.	Fluid Power engineering Services	04.04.2015	Operational
16.	Yalamanchilli	22.04.2015	Construction approval awaited
17.	Serrano Hospitality services LLP	22.04.2015	Construction started
18.	Electromate Components Pvt. Ltd.	10.08.2015	Operational
19.	Ashray Logistics Pvt. Ltd.	28.10.2015	Construction started

Memorandum of Understanding:

S.No.	Name of Company
1.	Titanium Tantalum Products Ltd.
2.	Techflow Hvac Industries Pvt. Ltd.
3.	Shrooqal Energy Private Ltd.
4.	Hamtech Pvt. Ltd.
5.	M/s Aerofil Trading LLC
6.	M/s Bellco Industries
7.	South India Plywood Pvt. Ltd.

Exports that the SEZ units have brought in since it became operational:

YEAR	EXPORTS (In Lakhs)
2011-2012	822
2012-2013	1296
2013-2014	5154
2014-2015	12229
2015-2016	16449

15.The fifth respondent also took a stand that SEZ is gradually developing and improving the quality of life of the villages and it currently employs local people from the surrounding villages and committed in completing the following:

(i) Permanent water supply scheme to SEZ
(ii) Setting up of water distribution network such as over head tanks and sumps
(iii) Fire Fighting Network
(iv) Sewerage treatment plant
(v) Solid waste management
(vi) extending the major roads along with street lighting
(vii) Drainage and rain water harvesting
(viii) Power and Voice Communications

16.It is also stated that steps have already been take to bring in additional investment to the tune of Rs.250 crores. It also took a stand that in the light of the disposal of W.P.(MD) No.6116 of 2013, the present writ petition is not at all maintainable and prays for dismissal of this writ petition.

17.The eighth respondent has filed the counter affidavit denying the averments made in the affidavit filed in support of this petition and took a stand that they did not acquire Nanguneri SEZ project and the SEZ being developed by the fifth respondent is being marketed only by other company and therefore, prays for dismissal of this writ petition.

18.The tenth respondent in his counter affidavit has adopted the stand of the fifth respondent and the learned counsel appearing for the tenth respondent would submit that he has subsequently resigned from the post.

19.Mr.Veera Kathiravan, learned Standing Counsel appearing for the eighth respondent has drawn the attention of this Court to the order dated 10.02.2014 in W.P.(MD)No.6116 of 2013 and would submit that the writ petition was filed by Mr.S.Shanmugasundaram, to implement the said project or in the alternative to take back the allotted lands for fresh tender or resume the lands to the original owners. In the said writ petition, TIDCO has filed the counter affidavit as to the development taken place and accordingly, the writ petition was disposed of and therefore, the present writ petition is not at all maintainable.

20.The learned senior counsel appearing for the eighth respondent has also drawn the attention of this Court to the counter affidavit of the fifth respondent and would submit that even in the State of Gujarat, the Kandla SEZ project was established in the year 1965 and it has become fully operational only recently and since the Government of Tamil Nadu took a specific interest to develop the southern parts of the State, thought fit to develop the Special Economic Zone and progress is being made and as such it cannot be said that SEZ has become totally non-functional.

21.Insofar as the allegation favouring some of the private respondents are concerned, the learned Senior Counsel has invited the attention of this Court to the counter affidavits of the second and third respondents and would submit that in all those cases, the third respondent had accorded in-principle of rules and as such it cannot be faulted with and would further add that the petitioner who claims to be an advocate, went on to make allegation and mala fides without evidence or substance and prays for dismissal of the same with exemplary cost.

22.Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the second respondent would submit that periodical monitoring is also done and in-principle approval has been accorded and if any infraction is noted in terms of joint venture agreement, immediate and necessary action will be taken to cancel the agreement and steps will be taken to resume the position of the same.

23.The learned Standing Counsel appearing for the third respondent would submit that the third respondent is promoting the industrial policy of the Government of Tamil Nadu and taken all possible endeavour to make SEZ at Nanguneri, fully operational and progress is being made and it is also periodically monitored and on instructions would submit that immediate and necessary steps would be taken to nominate a Director to the Board of the fifth respondent. The eighth respondent would submit that it is only a facilitate to market the SEZ developed by the fifth respondent and beyond that, they have no role to play.

24.The learned counsel appearing for the tenth respondent would submit that since he has been arrayed in his personal capacity, he has resigned and he has nothing to say with regard to the allegations made in the affidavit filed in support of this petition.

25.This Court has considered the rival submissions and also perused the materials placed before it.

26.It is not in dispute that the Special Economic Zone is also having a statutory packing in the form of Special Economic Zone Act, 2014 and the second respondent had acquired 1534 acres of private patta lands and alienated 575 acres of Government poramboke lands in favour of the third respondent and the patta lands were transferred by the third respondent in favour of the fifth respondent joint venture company through a sale deed dated 07.05.2001, subject to conditions stipulated in G.O.(Ms).No.429, Industries (MIE.1) Department, dated 12.12.2000.

27.A perusal of the counter affidavits of the second and third respondents would disclose that steps have been taken to make the SEZ fully operational and as per paragraph No.20 of the counter affidavit filed by the third respondent, 28 companies have signed Memorandum of Understanding (MoU) for the allotment of land, of which MEPZ SEZ was granted permission for 20 units in order to set up the respective units in the SEZ and 10 units have commenced their production and as of 30.06.2016, the export generated from Nanguneri Special Economic Zone is Rs.422 crores (cumulative) and it has also generated employment opportunity to 300 persons. It is also the stand of the fifth respondent that while providing employment opportunity, the local residents are also preferred.

28.Paragraph No.43 of the counter affidavit of the fifth respondent also gives the details of the companies which are functioning as well as the companies with which Memorandums of Understanding (MoUs) came into existence. It is to be pointed out at this juncture that the Government had acquired 1534 acres of private patta lands with the object of making the State industrialized and only small extent of land is being put to use. The third respondent who have a share in the affairs of the fifth respondent did not choose to nominate a Director from the year 2011 onwards and it is high time that they should nominate Directors to foresee the functions and affairs of the fifth respondent.

29.Insofar as the induction of the eleventh respondent is concerned, the counter affidavits of the second and third respondent would disclose that in-principle approval has been accorded and it is also the stand of the second respondent that periodical monitoring is being done and if any infraction is noted as to the conditions stipulated in G.O.(Ms).No.429, Industries (MIE.1) Department, dated 12.12.2000 and the clauses in the joint venture agreement, immediate and necessary action would be taken to resume the possession of the lands.

30.In ***2016 6 SCC 408 (Centre for Public Interest Litigation Vs. Union of India & others)***, judicial review of allocation of State Largesse came up for consideration and the case pertains to delinking of radio spectrum allocation from licence and migration of existing licences and its validity. It is relevant to extract the following paragraphs:

> *"Such a policy decision, when not found to be arbitrary or based on irrelevant considerations or mala fide or against any statutory provisions, does not call for any interference by the Courts in exercise of power of judicial review. This principle of law is ingrained in stone which is stated and restated time and again by this Court on numerous occasions. In Jal Mahal Resorts (P) Ltd. v. K.P. Sharma[3], the Court underlined the principle in the following manner:*
>
> *116. From this, it is clear that although the courts are expected very often to enter into the technical and administrative aspects of the matter, it has its own limitations and in consonance with the theory and principle of separation of powers, reliance at least to some extent to the decisions of the State authorities, specially if it is based on the opinion of the experts reflected from the project report prepared by the technocrats, accepted by the entire hierarchy of the State administration, acknowledged, accepted and approved by one Government after the other, will have to be given due credence and weightage. In spite of this if the court chooses to overrule the correctness of such administrative decision and merits of the view of the entire body including the administrative, technical and financial experts by taking note of hair splitting submissions at the instance of a PIL*

petitioner without any evidence in support thereof, the PIL petitioners shall have to be put to strict proof and cannot be allowed to function as an extraordinary and extra-judicial ombudsmen questioning the entire exercise undertaken by an extensive body which include administrators, technocrats and financial experts. In our considered view, this might lead to a friction if not collision among the three organs of the State and would affect the principle of governance ingrained in the theory of separation of powers. In fact, this Court in M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592 at p. 611 has unequivocally observed that:

"41. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

31.As pointed out by the learned Senior Counsel appearing for the petitioner, the State of Gujarat was a forerunner in developing the SEZ division even in the year 1965 and the progress was slow and steady and reached the potential very recently. Therefore, this Court also is of the view that the SEZ at Nanguneri would reach its full potential and however, it is for the state holders, namely, respondents 2, 3 and 5 and others to play a pivotal role to do so.

32.Industrial development of a State is an important factor contributing not only in the development of the State, but also the country. This Court can also take note of the fact that the State of Tamil Nadu is having a vast pool of technically qualified persons and it is also having largest number of engineering colleges in the country and if industrialization and economic development is made, the technically qualified persons would get their employment and it is also a boost for betterment of the State.

33.The grievance of the petitioner appears to be the slow progress being made in developing the SEZ and the second and third respondents, in their counter affidavits had also assigned reasons for such slow progress and they should make all possible and necessary endeavour to develop SEZ to its full potential.

34.It is also to be noted at this juncture that development of Special Economic Zone is having a statutory packing and it is also a policy decision and as per the dictum laid by the Hon'ble Supreme Court in the above cited decision, when such a policy decision is not found to be arbitrary or not attended with mala fide / oblique nature, the scope of judicial review in exercise of Article 226 of the Constitution of India is very limited and as observed by the Apex Court, in the above cited decision, "when it comes to the judicial review of economic policy, the Courts are more conservative as such economic policies are generally formulated by experts".

35.The State of Tamil Nadu is already known as "Detroit of India" and the State Government shall make every endeavour to make it as a number one industrialized State in this Country.

36.In the light of the reasons assigned above, the writ petition is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

(*)AS PER LETTER DATED 18.4.2018

/True Copy/

Sub Assistant Registrar

(*)TO BE SUBSTITUTED ALREADY DESPATCHED ON 13.04.2018

To

1. The Secretary, Union of India,
   Ministry of Corporate Affairs, New Delhi.
2. The State of Tamil Nadu,
   Rep. by its Additional Chief Secretary,
   Industries Department, Fort St. George, Chennai - 600 009.
3. The Managing Director,
   Tamil Nadu Industrial Development Corporation,
   No.19A Rukmani Lakshmipathy Salai, Egmore, Chennai - 600 008.
4. The District Collector,
   Tirunelveli District, Tirunelveli.

+1cc to Mr.S.Karthikei Balan, Advocate Sr.No.54479
+2cc to Mr.M/s.King & Partridge, Sr.No.53903
+1cc to Mr.A.N.Ramanathan, Advocate Sr.No.53976
+1cc to Spl.Government Pleader Sr.No.54107
+1cc to Mr.N.Shanmuga Selvam, Advocate Sr.No.54149
+1cc to M/s. Veera Associates, Sr.No.54151
+1cc to Mr..Sakthikumaran, Advocate Sr.No.54166
+1cc to Mr.K.Prabhakar, Advocate Sr.No.54277

MR
VB/SKN/RSK/SAR4/12.04.2018/13P/14C
RL/14C/13P/JC/SAR1/28/4/2018

W.P(MD)No.8224 of 2016
08.03.2018