

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2019

PRONOUNCED ON : 23.07.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.1262 of 2019 and
W.M.P.No.1417 of 2019

Aascar Entertainment Private Limited,
By Managing Director,
V.Ravichandran,
9, 10th Avenue,
Ashok Nagar,
Chennai - 600 083.

... Petitioner

Vs

1.The Secretary and Commissioner,
Land Administration,
Chepauk, Chennai.

2.The District Collector,
Collectorate,
Salem.

3.A.Chandrasekaran

4.The Authorised Officer,
Indian Overseas Bank,
Cathedral Branch,
No.763, Anna Salai, Chennai
(R.4 suo motu impleaded
vide order dated 14.02.2019 made
in W.P.No.1262 of 2019)

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified mandamus calling for records leading to pass the impugned common order of the first respondent dated 10.01.2019 in proceeding No.L1/454/2019 confirming the order of the second respondent dated 07.01.2019 passed in Na.Ka.No.420/2019/C2 (Screen - 1), Na.Ka.No.422/2019/C2 (Screen - 2) and Na.Ka.No.423/2019/C2 (Screen - 3), and set aside the same and consequently direct the

second respondent to renew the 'C' form license granted to the petitioner in respect of Screen - 1, Screen - 2 and Screen - 3 situated in Erumapalayam Village, Salem Taluk and District within the time frame fixed by this Court.

For petitioner :Mr.V.Raghavacharry, for
Mr.M.Narayanaswamy

For Respondents 1 and 2:Mr.N.Inbanathan,
Additional Government Pleader

For 3rd Respondent :Mr.Ameed Ismail for Waron and Sairams
For 4th Respondent :Mr.F.B.Benjamin George

ORDER

The case of the petitioner as averred in the affidavit:

The writ petitioner is the owner of the property bearing T.S.Nos.26 and 34/2 of ward-J, Erumapalayam Village, Salem Town. In the aforesaid property, a Theatre complex consisting of three screens functioning. The Licensing Authority under the Tamil Nadu Cinema Regulation Act, 1955, had issued 'C' Form license for each of the screen to exhibit cinematograph films valid up to 07/01/2019. The petitioner submitted the application for renewal of the 'C' Form license during the first week of December' 2018. The 2nd respondent office refused to receive the application and dragged. Later, they orally informed that the proceedings under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred to as "the SARFAESI Act") has been initiated against the property and refused to receive the application. Therefore, on 28/12/2018, the application for renewal was sent through post along with documents necessary, for renewal. When there is no impediment to renew the 'C' Form license, the 2nd respondent delayed passing order on the renewal application. Hence, the petitioner herein filed Writ Petitions in W.P.Nos.607,610 and 613 of 2019 for mandamus to direct the second respondent herein to consider the applications submitted by the petitioner and pass orders at the earliest. These writ petitions were filed on 07/01/2019 and taken up for admission on 08/01/2019. Meanwhile, the 2nd respondent passed order on 07/01/2019 returning the applications stating that the proceeding under SARFAESI Act is pending against the properties in question. So, when the writ petitions were heard on 08/01/2019, this Court ordered the 2nd respondent to renew the licence temporarily till 10/01/2019 and adjourned the hearing of the writ petitions on 11/01/2019. Meanwhile, the order of the licensing authority (2nd respondent) was challenged before the appellate authority (first respondent)

on 09/01/2019. In the appeal proceedings, the third respondent, former employee under the petitioner entered appearance as caveator and filed his objections to renew license. The appellate authority passed order on 10/01/2019 dismissing the appeal.

2.It is contented by the learned counsel for the petitioner that, the licensing authority (2nd respondent) on receipt of the applications for renewal of 'C' Form license, rejected the same only on the ground of invocation of SARFAESI proceedings. On appeal, the appellate authority (first respondent) has dismissed the appeals assigning new reasons contrary to the order challenged before him. For the said reason, the common order dismissing the three appeals confirming the rejection of the renewal is arbitrary and liable to be set-aside.

3.According to the learned counsel appearing for the petitioner, the licensing authority has assigned pendency of SARFAESI proceedings as reason for rejecting the renewal applications. The writ petitioner has explained in the appeal that pendency of SARFAESI proceedings will not take away the petitioner's right to continue the business. The SARFAESI proceedings is contested by the writ petitioner and pending before Debt Recovery Tribunal. Despite the said explanation, at the instance of the 3rd respondent, the appellate authority has invented new reasons to dismiss the appeals and hastily passed the order without proper appreciation of law.

4.The third respondent, a stranger to the affairs of the petitioner theatre has no locus standi to interfere in the appeal proceedings before the first respondent, but, he being a influential person both politically and economically, the first respondent entertained his claim as caveator and allowed him to file objections and based on his objections has erroneously dismissed the appeals.

5.The third respondent, earlier filed a suit before the learned II Additional District Court, Salem in O.S.No.100/2018 claiming right over the petitioner theatre complex and obtained exparte interim order. Against the interim order, the writ petitioner filed an appeal in C.M.A.No.961/2018 before this Court and this Court, after hearing the parties vacated the interim order passed by the trial Court. Thereafter the 3rd respondent herein gave a petition before the 2nd respondent that the petitioner herein has installed Digital Projector without prior permission. Based on this complaint, the Electrical

Inspector passed proceedings to take action against the petitioner. Hence, the petitioner has filed another writ petition in W.P.No.20995 of 2018 and there is an order of interim stay.

6.The contention of the 1st and 2nd respondent:

The Tamil Nadu Cinema (regulation) Rules, 1957 (hereinafter referred to as "the said Rules") prescribes procedures to be followed to renew 'C' Form license. Every application for the renewal shall be made before expiry of the license accompanied with the documents enumerated under Rule 92 of the said Rules which includes structural soundness certificate issued by the Public Works Department. A copy of the renewal has to be forwarded simultaneously to the Chief Electrical Inspector and the Public Works Department Authority concerned.

7.Under Rule 94 of the said Rules, at every renewal of the Chief Electrical Inspector's certificate, the enclosure, cinema apparatus and plant, electrical installation and fire precautionary measures, shall be inspected by the Chief Electrical Inspector or an officer deputed by him who will certify that the installations continue to be maintained in proper working order according to the rules.

8.The petitioner has not complied those guidelines for renewal of 'C' Form license. He failed to produce valid documents such as, structural soundness certificate and original Electrical Inspector certificate, at the time of submission of his applications. Further, SARFAESI proceedings has been issued.

9.The authorised officer of Indian Overseas Bank (4th respondent) under the SARFAESI Act, 2002 has taken symbolic possession of the petitioner property. The actual possession has to be taken through the District Collector and a request from the bank has received by the 2nd respondent from the bank to take possession of the property under section 14(1) of the SARFAESI Act and hand over the same to the 4th respondent Bank for realisation of the loan amount. The theatre complex for which 'C' Form license is sought is the property which is sought to be taken possession by the 4th respondent Bank for non-payment of loan to the tune of Rs.96,75,81,634/-.

10. For the aforesaid reasons, the request for renewal was rejected by the licensing authority (2nd respondent). On appeal, due opportunity was given to the petitioner. In the SARFAESI proceedings, the petitioner failed to comply with the condition order of paying 5% of the due on 17/11/2018 and another 5% on 30/11/2018. Hence, the stay granted against the SARFAESI proceedings vacated and no bar to take possession of the petitioner theatre complex. Therefore, for non production of certificates and for the pendency of SARFAESI proceedings, the appeals were rejected. Without strict compliance of the requirements, under the Rules renewal of 'C' Form license cannot be granted.

11. Counter filed by the 3rd respondent:

According to this respondent, the writ petition is not maintainable in view of Rule 47-A(1) of the said Rules which provides for revision before the Government against the appellate authority order. He is not a third party to the theatre. The petitioner is the authorised person on behalf of M/s. Aascar Entertainment (P) Ltd. He has invested around 5 crores of rupees and running the theatre along with one K. Chidambaram. Pursuant to the authorisation, the petitioner has handed over all the original documents related to the theatre complex. He has invested money in the theatre based on the documents given by the petitioner. The documents are held by him as security for due repayment of amount invested by the 3rd respondent and therefore, it is a reciprocal implied contract between the 3rd respondent and the petitioner for enforcing the promises and assurances given by the petitioner. Without original documents, the petitioner cannot get renewal and not entitled to renew the license without settling the amount invested by the 3rd respondent. The 3rd respondent has already informed through letter to all the authorities including the District Collector, Superintendent Engineer of Public Works Department and Electricity Department requesting not to renew the 'C' Form license in favour of the petitioner.

12. The submissions of the learned counsel for the petitioner and the learned counsel for the respondents heard. Pleadings and documents filed along with it perused. Pending writ petition, few more petitions were filed by the parties and interim orders were also passed. The same were also taken into consideration to avoid overlapping/conflicting orders.

13.This Court at the time of admission, has passed the following interim order on 11/01/2019 :-

"Earlier, this Court, in W.P.Nos.607, 610 and 613 of 2019 dated 08.01.2019, had passed an order directing the respondent to issue E permit as the C-Form licence has already expired on 07.01.2019. The application for renewal of C-Form has also been dismissed. Hence, the petitioner had filed an appeal before the appellate authority/Joint Commissioner-III, Land Administration Department, Chennai on 09.1.2019 to direct the respondent to extend the E permit from 11.01.2019 till the disposal of the appeal, but on the very next day i.e. on 10.01.2019, the appeal was disposed of by stating that C-Form has expired on 07.01.2019 and no E permit was granted in favour of the petitioner.

2. The District Collector, Salem, has dismissed the application to renew the C-Form licence on the ground that the proceedings has been initiated under the SARFAESI Act and therefore, Cform licence cannot be granted, whereas, the said ground was not dealt with by the appellate authority.

3. Despite the order of this Court dated 08.01.2019, directing the authorities to issue E permit, the same was rejected by the appellate authority, hence, the 2nd respondent is directed to issue E permit till 18.01.2019 forthwith, on which date, the Writ Petition would be taken up for hearing.

4. List the matter on 18.01.2019."

14.This interim order has been extended time to time and the petitioner is running the Theatre based on the 'E' permit issued as per the Court direction. Meanwhile, the writ petitions in W.P.Nos.5953 and 6206 of 2019 filed by the petitioner and

the 3rd respondent respectively. One seeking direction to issue duplicate Electrical Certificate and another, not to issue the said certificate. Learned Single judge has passed common order allowing the petition filed by the present writ petitioner and ordered to issue duplicate Electrical Inspection Certificate and dismissed the petition filed by the 3rd respondent seeking negative mandamus not to issue the certificate to the petitioner. Against the common order passed by the learned Single Judge of this Court, the 3rd respondent has filed intra-court appeal and the said appeal in W.A.No.1039/2019 is pending. The 3rd respondent has filed a memo dated 22/04/2019 briefing the above facts.

15.Regarding the SARFAESI proceedings, the petitioner has filed an affidavit on 12/06/2019 swearing that:-

"2.I respectfully submit that the 2nd respondent had rejected the renewal of 'C' form license in respect of the petitioner's theatre by its order dated 07.01.2019 in Na.Ka.No.420/2019/C2 (Screen - 1) Na.Ka.No.422/2019/C2 (Screen - 2) and Na.Ka.No.423/2019/C2 (Screen - 3), only on the ground that SARFAESI proceeding is pending in respect of the theatre complex which was also confirmed by the 1st respondent in his order dated 10.01.2019 in No.L1/4544/2019. I have challenged the above said orders in this writ petition. During the pendency of the above writ petition, after due negotiations, OTS Proposal has been positively considered in favour of the petitioner by the 4th respondent, to pay a sum of Rs.77.20 crores vide letter dated 20.03.2019. As per the terms of the OTS the petitioner has paid a sum of Rs.10 crores till date. The petitioner has sought extension of time till 30.09.2019 to settle the balance remaining OTS amount of Rs.61.20 crores for which negotiation is going on between the petitioner and the 4th respondent bank. It is respectfully submitted by the petitioner that he will clear the entire balance due of Rs.61.20 crores on or before 30.09.2019.

3.In these circumstances, we request that this Hon'ble Court may be pleased to direct the 2nd respondent to renew the 'C' form license in respect of the petitioner's theatre having Screen -1, Screen -2, and Screen - 3 situated in Erumapalayam Village, Salem Taluk and District."

16.In the additional typed-set of papers dated 22/01/2019 filed by the petitioner, insurance policy for the period covering 22/01/2019 to 21/01/2020 is enclosed. The issuance of duplicate Electrical Inspection Certificate has been seized by the Division Bench of this Court in W.A.No.1059 of 2019 and the matter is pending.

17.In the said background of facts, the order of the first Respondent dated 10/01/2019 confirming the order of the 3rd respondent refusing the renewal of 'C' Form License to the petitioner has to be tested.

18.The order of the first respondent is attacked on the ground that, in the appeals, a new reason has been invented by the first respondent and the first respondent has entertained the 3rd respondent as caveator and yielded to him. The order of the licensing authority (second respondent) dated 7/01/2019 indicate that the applications of the petitioner rejected on the sole reason that, in the SARFAESI proceedings for a due of Rs.1,15,57,35,934/-, the theatre complex property has been taken possession under the order of the second respondent District Collector in Na.Ka.19808/2018/C-2 dated 12/10/2018. Therefore, 'C' Form license cannot be renewed.

19.On appeal, the first respondent has also rejected the renewal application on that ground as well as non production of required documents. Though, the second reason may appear to be new, it is a fact revealed on scrutiny of the records. For easy and better appreciation, the operative portion of the order of the appellate authority order is extracted below:

20.The impugned order dated 10/01/2019 passed by the first respondent reads as under:-

"ORDER

Based on the available records, it is construed that, the petitioner Aascar Entertainment (P) Ltd., (3 screens) are not having the required certificates, for renewal of 'C' form licence/'E' permit as per rules 92(1) & 97 of TN Cinema (Regulation) Rules, 1957 and the 'C' form license expired on 07.01.2019. District Collector has passed an order under SARFAESI Act and the interim stay orders on this issued by Debt Recovery Tribunal with a condition to pay 5% on 17.11.2018 and 5% on 30.11.2018, is vacated on 19.11.2018 due to conditional order not being complied with.

Thus, on the afore mentioned grounds and based on provisions of the Act and the Rules, the petitioners prayer for stay and grant of E-permit stands rejected.

I do not find any valid reasons to interfere with the decision of the District Collector, Salem dated 07.01.2019 for C-form licence renewal. The District Collector, Salem is hereby instructed to ensure that the Rules framed under Tamil Nadu Cinema Regulation Act 1955 may be scrupulously adhered in this regard.

The Appeal petition thus, stands disposed."

21.The appellate authority has construed from the records that the petitioner not having the required certificates for renewal of 'C' Form license as per Rules 92(1) and 97 of the TN Cinema (Regulation) Rules, 1957 besides pendency of the SARFAESI proceedings. To arrive at that conclusion, the appellate authority has perused the records and has extracted the details reveal through the records. While discussing the details, the objections of the 3rd respondent also finds place. But his objections were not the reason for refusing renewal and it cannot be the reason also. Any person who has lend money and taken the original documents as security can have no right to

interfere in the matter of renewal of license on the ground that the documents are given to him as security to discharge the loan and without discharge of the loan, the license cannot be renewed.

22. Grant of 'C' Form license and its renewal of the same are governed by Statute. 'Whether the licensee eligible for grant of license by satisfying the requirements envisaged under the said Rules' is a matter of concern between the licensing authority and the licensee/applicant. The 3rd respondent based on some documents have already approached the Civil Court to work out his remedy and in the Suit filed by him (in O.S.No.100 of 2018), he has sought for declaration of ownership and assignment of license in his name as per the Rule 120 of the TN Cinema (Regulation) Rules, 1957.

23. The 3rd respondent contention that there is a 'reciprocal implied contract' between him and the petitioner is a matter for the Civil Court to decide. In fact, 'when the exparte interim injunction obtained by the 3rd respondent in the suit appealed by the petitioner and tested before this Court in C.M.A.No.961 of 2018, the learned Judge in his inimitable style has observed as follows:-

"6.1 When rival submissions are assessed for their preponderating probable merit, this Court finds greater merit in the arguments of the appellants' counsel, that a representative of an owner of an immovable property has no independent legal character to exclude such owner from enjoying the property. Besides his pleading, the only significant piece of evidence that the plaintiff relies on is a scribbled statement in a piece of paper dated 05-01-2017 attributed to certain Mani, who describes himself as representing the fourth defendant/first appellant. Assuming the contents are true and are granted any evidentiary value (which is essential for deciding the existence of a strong prima facie case), still does it have the effect of conveying any right to the plaintiff which can be considered as one derived from the right of ownership over the suit property?

6.2 The criterion for seeking protection in law for securing possession of an immovable property is not the mere factum of its possession, but the legal character that goes to define it. In the instant case, even if the plaintiff's assertion that he had expended a few crores of rupees for reviving the theater complex to its operational level is considered true, the point is, does it create any right or interest over the land? The point to be addressed in every case where a suitor, or a defendant seeks an order of injunction to protect his possession, is to investigate if there inheres in them a right in the immovable property, the title that law seeks, which is capable of excluding others from possessing it, and to ascertain the said title on a preponderance of probability by appreciating the pleadings and evidentiary material. Accordingly, a possessory mortgagee can exclude the mortgagor of latter's right to be in immediate possession, and so is a lessee who can exclude the lessor, since their rights are derived from the right of ownership, which in law creates an independent right or interest in their favour. The primacy of the right of ownership, or title to be in immediate possession in the context of exclusion of possession is best exemplified in cases involving the right of a co-sharer or of a co-owner of an immovable property. In this class of cases, law does not generally sanction exclusion of a co-sharer or a co-owner by another co-sharer or a co-owner of his right to be in immediate possession. This is founded on the principle that among the co-owners or co-sharers, everyone will have a fractional title to be in possession, all of which are identical in character, irrespective of the extent of right the fraction may represent. Therefore, to injunct one co-owner to secure the possession of another co-owner may imply granting one fractional right holder a preferential treatment over the other. There are however, couple of exceptions to

this general rule. The bottom line is, let not the holder of a title of a superior variety be injuncted from enjoying all that the title confers in him. That a trespasser, though in possession, is not granted protection in law is also founded on this. Can it be now said, that a suitor, who by his own statement is a mere representative of the owner of an immovable property, is entitled to claim that he has a title greater than the owner to exclude the latter's right to be in immediate possession? This, precisely should have been the point or principle which the trial Court ought not to have ignored when it granted an order of interim injunction, but here it has lost its way. Given the nature of plaintiff's pleading, the proximate description, or the slot in which plaintiff's claim of right of possession may be fitted in, is that of a representative, an agent, or may be that of a caretaker, but none of which clothe him with a right to exclude the owner of the property from possessing it. In Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeria (Dead) Through LRs [(2012) 5 SCC 370], the Hon'ble Supreme Court has held that a caretaker of a property has no vested right to seek injunction against the owner of the property, which when translated into a legal notation would mean that he who does not have a title to be in immediate possession of an immovable property, or anything signifying a right in the property, cannot exclude one who has a right or title to it. The plaintiff in this case, did not appear to trouble the defendants/appellants in his litigious pursuit, and made easy their job with his own pleadings as he walked into the zone of no-rights-in law voluntarily. The injunction granted deserves to be vacated.

6.3 It might be that the injunction may not have been extended by the trial Court, but it makes no relevance here, as that which is incapable of being granted in law should not be let to occupy the judicial space and adds

to the congestion in litigations. Therefore, this Court holds the very application for interim injunction itself is ill-conceived, and that the same is liable to be dismissed."

24. Presently, it is informed by the petitioner through the affidavit dated 12/06/2019 that, after negotiation, the proposal of One Time Settlement (OTS) has been positively considered by the 4th respondent (Indian Overseas Bank) and as per the terms of OTS, he has already paid Rs.16 crores and agreed to pay the balance Rs.61.20 crores before 30/09/2019. It is also informed that except the original Electrical certificate, the petitioner is in possession of all other documents required for renewal of 'C' Form License and the issue of the Electrical Certificate is subject matter under consideration of the Division Bench in W.A.No.1039 of 2019.

25. After reserving the case for orders, it was brought to the notice of this Court that the Division Bench of this Court in W.A.No.1039 of 2019 & C.M.P.No.7762 of 2019 on 12/07/2019 has passed the following order:-

"Having heard the learned counsel for some time and on perusing the record, we direct by this interim order that both the parties will surrender all their Original Certificates, issued under the provisions of the Tamil Nadu Cinemas (Regulation) Act, 1955, and the Tamil Nadu Cinemas (Regulation) Rules, 1957, before the learned District Collector, Salem, within a period of ten days from today.

2. Both the parties shall appear before the learned District Collector, Salem, in the first instance on 23.07.2019. The parties will be free to raise all their contentions before the learned District Collector and lead evidence for their rival claims to claim the Licence or Certificates under the provisions of the said Act and the Rules.

3. On approach of the parties as indicated above and on analysing their claims, the learned District Collector, Salem, is directed to pass a detailed and speaking order within a period of four weeks thereafter. The said order passed by the learned District Collector shall be placed before this Court through the learned Government Counsel by the next date of hearing of the case. However, effect to the said order will not be given without leave of this Court."

26. In view of the above direction of the Hon'ble Division Bench of this Court and the change of circumstances and facts, the order of the second respondent as confirmed by the first respondent vide order dated 10/01/2019 implicitly ordered to be revisited by the Division Bench. Therefore, the order of the first and second respondents dated 7/01/2019 and 10/01/2019 respectively are quashed.

27. In reverence to the Division Bench direction dated 12/07/2019, the 2nd respondent is directed to act and decide. Till the Division Bench passes order, the temporary license granted in favour of the petitioner, as per the interim order of this court, shall be in force.

28. The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary and Commissioner,
Land Administration,
Chepauk, Chennai.

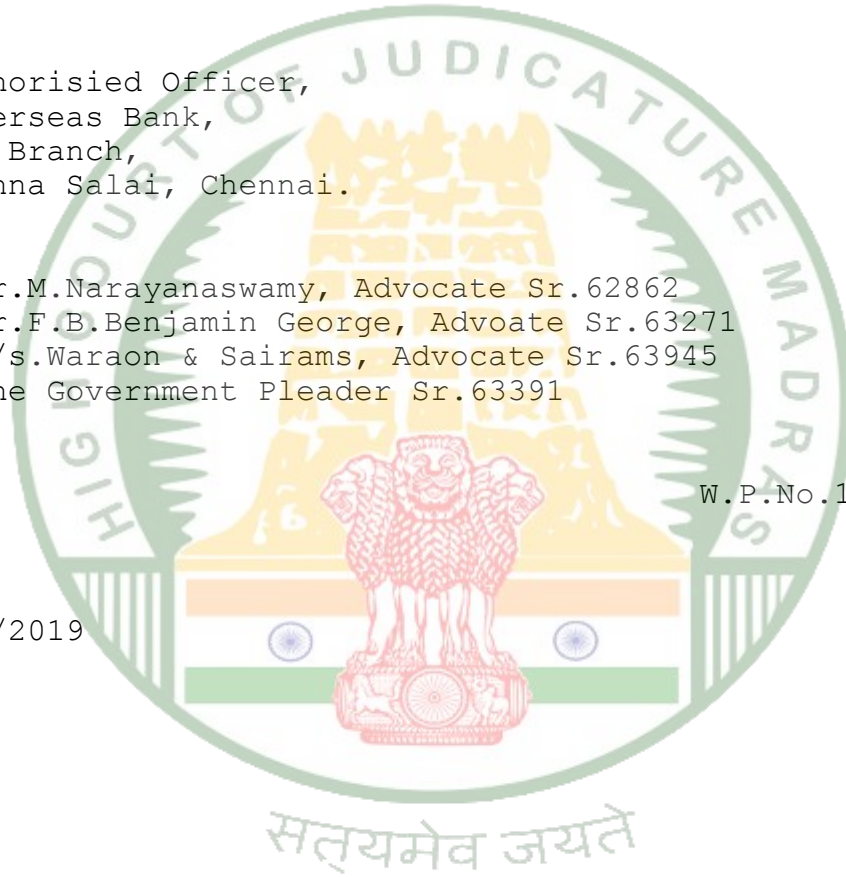
2.The District Collector,
Collectorate,
Salem.

3.The Authorised Officer,
Indian Overseas Bank,
Cathedral Branch,
No.763, Anna Salai, Chennai.

+2cc to Mr.M.Narayanaswamy, Advocate Sr.62862
+1cc to Mr.F.B.Benjamin George, Advocate Sr.63271
+1cc to M/s.Waraon & Sairams, Advocate Sr.63945
+1cc to the Government Pleader Sr.63391

W.P.No.1262 of 2019

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