

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 14-08-2020

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.Nos.35319 of 2012, 2459, 4566 and 7834 of 2013 & 16083 of 2018

B.Karpagam ...Petitioner in W.P.No.35319/2012

1.H.Zakir Hussain

2.Mrs.Halimuthu Fathima ...Petitioners in W.P.No.2459/2013

O.Syed Abbas ...Petitioner in W.P.No.4566/2013

1.Mariam Mathew

2.V.Kora Mani ...Petitioners in W.P.No.7834/2013

Murugan ...Petitioner in W.P.No.16083/2018

-vs-

The Member Secretary (Incharge).

Mamallapuram Local Planning Authority,

Chengalpattu I.

...Respondent in W.P.Nos.35319/2012

and 2459,4566 & 7834/2013

1.The State of Tamilnadu,
rep.by its Secretary,
Department of Environment,
Fort St.George,
Chennai.

2.The Tamilnadu Coastal Zone Management Authority,
rep.by its Member Secretary,
Penangal Building, Saidapet,
Chennai.

3.The District Collector,
Collectorate, Gandhi Nagar,
Thaiyar Kullam,
Kancheepuram.

4.The Directorate of Town and Country Planning,
rep.by its Director,
807, Anna Salai, Chennai - 600 002.

5.The Mamallapuram Town and Country Planning Authority,
rep.by its Member Secretary,
Five Rathas' Shopping Complex Venpurasam Salai,
Mamallapuram - 603 104.

6.The Principal Secretary to Government,
P.W.D., Secretariat,
Fort St.George,
Chennai-600 009.

7.M/s.Rajsriya Automotive Industries
Private Limited.Respondents in W.P.No.16083/2018

(Respondents 6 & 7 are impleaded
as per order dated 25/11/2019
& 28/11/2019) in W.P.No.16083/2018

Prayer in W.P.No.35319 of 2012 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the respondent, its men, agents, servants and subordinates from interfering with the peaceful possession of the petitioner in respect of Plot No.18A, ECR Road, Muttukadu, Chengalpattu District.

Prayer in W.P.No.2459 of 2013 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the respondent, its men, agents, servants and subordinates from interfering with the peaceful possession of the petitioners in respect of Plot No.32, ECR Road, Muttukadu, Chengalpattu District.

Prayer in W.P.No.4566 of 2013 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the respondent, its men, agents, servants and subordinates from interfering with the peaceful possession of the petitioner in respect of Plot Nos.10 and 19, ECR Road, Muttukadu, Chengalpattu District.

Prayer in W.P.No.7834 of 2013 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, forbearing the respondent, its men, agents, servants and subordinates from interfering with the peaceful possession of the petitioners in respect of Plot No.4, ECR Road, Muttukadu, Chengalpattu District.

Prayer in W.P.No.16083 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus, directing the respondents 1 to 5 to forthwith demolish the illegally constructed houses, compound wall constructed in the area named ''Olive Beach'' in S.No.114, Muttukadu Village, Kancheepuram District, Tamil Nadu, restore the area to its previous pristine state and maintain the area free from any encroachment.

For Petitioners in W.P.Nos.35319/2012,
2459, 4566 & 7834/2013 : Mr.V.Raghavachari

For Petitioner in W.P.No.16083/2018 : Mr.A.Yogeshwaran

For sole Respondent in W.P.Nos.35319/2012, 2459, 4566 &
7834/2013 & Respondents 1 to 6 in
W.P.No.16083/2018 : Mr.E.Manoharan,
Addl.Govt.Pleader.

ORDER

(Order of the Court was made by Mr.Krishnan Ramasamy,J)

Petitioner in W.P.No.35319 of 2012 purchased the property in Plot No.18A in Survey No.114, ECR Road, Muttukadu, Chengalpattu, on 01.03.2012 from Dr.Ravi Ramalingam with an intention to raise a construction for her own purpose. She applied for Planning Permission with the local body, which made an inspection of the area and thereafter granted Planning Permission, enabling her to put up the construction. Accordingly, she put up the construction on the said plot and Tamil Nadu Electricity Board also effected service connection.

2. Petitioners in W.P.No.2459 of 2013 are husband and wife, who purchased the plot in Plot No.32 in Survey No.114, ECR Road, Muttukadu, Chengalpattu, on 01.03.2012 from Esskayar Farm Developers (P) Ltd. The property was purchased by the petitioners with an intention to raise a construction for their own purpose. Since the Planning Permission was applied by one of the vendors with the local body, the local body made an inspection of the area and thereafter granted permission, enabling them to put up the construction. Accordingly, the writ petitioners put up the construction on the said plot.

3. Petitioner in W.P.No.4566 of 2013 purchased a property in Plot Nos.10 and 19 in Survey No.114, ECR Road, Muttukadu, Chengalpattu, on 02.07.2008 from Dr.Ravi Ramalingam. The property was purchased by the petitioner with an intention to raise a construction for his residential purpose. Accordingly, he applied for Planning Permission with the local

body, which granted Planning Permission, thereby enabling him to put up the construction and for the said construction, Tamil Nadu Electricity Board has effected service connection.

4. Petitioners in W.P.No.7834 of 2013 are husband and wife, who purchased the property in Plot No.4, Olive Island, in Survey No.114, ECR Road, Muttukadu, on 17.06.2010 from Dr.Ravi Ramalingam. The said property was purchased for the purpose of raising a construction for their own purpose. Accordingly, they applied for Planning Permission with the local body, which granted Planning Permission and the Tamil Nadu Electricity Board also effected service connection.

5. Under the above circumstances, all-of-a-sudden, the respondent authority has affixed a placard on the petitioners' gates, stating that the construction has been made in violation of the Tamil Nadu Town & Country Planning Act, 1971, hereinafter referred to as 'the Act'. In the placard, it was stated that the premises is sealed under Section 57 (4) of the Act. The petitioners came to know the actions of the respondent on seeing the publication in the Tamil Daily 'Dinamalar' on 24.12.2012.

6. Learned counsel for the petitioners contends that the action taken by the respondent authority under Section 57 (4) of the Act is without following the procedure laid down under Section 56 of the Act and no notice was served on the petitioners as enumerated under Section 107 of the Act. Therefore, he would contend that the action of the respondent is arbitrary, whimsical and illogical. In support of his contention, he referred to the following decisions :

(1) A decision of this Court in W.P.No.5971 of 1995, dated 14.12.1995.

(2) A decision of this Court in W.P.No.20217 of 2008, dated 17.03.2015.

(3) A decision of this Court in W.P.No.11295 of 2012, dated 02.11.2012.

(4) A decision of this Court in W.P.No.12125 of 2013, dated 09.04.2015.

(5) A decision of the National Green Tribunal, Southern Zone, Chennai, in Application No.4 of 2017, dated 01.08.2017.

(6) Madurai Corporation v. P.Kayalvizhi, (2016) 10 SCC 722.

(7) A Decision of the Kerala High Court in W.P.No.4282 of 2009, dated 09.07.2009.

(8) A decision of the Kerala High Court in W.A.No.974 of 2015, dated 28.09.2015.

(9) A decision of the Kerala High Court in W.P.No.22522 of 2011, dated 27.06.2017.

7. Per contra, Mr.E.Manoharan, learned Additional Government Pleader, appearing for the respondent/authority inter alia contends that the respondent delegated his authority for granting Planning Permission to Muttukadu Panchayat under Section 91 of the Act up to 4000 sq.ft. for an approved layout. However, in the present case, the Planning Permission was granted to the petitioners' plots by Muttukadu Panchayat for the unapproved layouts. The learned Additional Government Pleader would also add that in the present case permission was granted within 200 metres of the radius from the sea, which squarely falls under 'No Development Zone' as per the Coastal Regulation Zone (CRZ) Notification 2011, declared by the Ministry of Environment and Forests, Government of India, under the provisions of the Environmental Protection Act, 1986; since the present plots of the petitioners fall within the purview of CRZ, the petitioners ought to have obtained permission from the CRZ authorities and, therefore, he contends that the Planning Permission was accorded by the local body, violating the powers of delegation and in excess of power.

8. The respondent authority has served notices to all the plot owners in Survey No.114, whose names appeared in the revenue records. In this regard, the learned Additional Government Pleader also referred to A-Register. As per A-Register, the vendors of the writ petitioners names have been shown as the owners of the respective plots. Therefore, notices were served in the names of the vendors of the writ petitioners vide Notices, dated 08.10.2012. The said notices were returned to the Member Secretary on 25.10.2012, with an endorsement on the cover 'Not available- Returned to the sender'. While inspecting the building, no person was available to give the ownership information. Hence, the notice, dated 08.10.2012, was affixed on the wall of the building by the Village Administrative Officer on 02.11.2012. Therefore, according to the learned Additional Government Pleader, proper notice was given and there is no violation of Section 107 of the Act, as stated by the petitioners. After a few complaints, the respondent, having no other option, sealed the buildings with the assistance of revenue and police officials on 22.12.2012 under Sections 56 and 57 of the Act. Therefore, he contends that due notice was served and there is no violation of principles of natural justice on the part of the respondent authorities in effecting service of notice on the petitioners while taking action under Section 57 (4) of the Act. He also relied upon decisions of the Hon'ble Supreme Court in Karnataka State Road Transport Corporation and Another v. S.G.Kotturappa and Another, (2005) 3 SCC 409, and The Kerala State Coastal Zone Management Authority v. State of Kerala Maradu Municipality and Others, (2019) 7 SCC 248.

9. W.P.No.16083 of 2018 has been filed by the petitioner as a Public Interest Litigation, seeking for a direction to respondents 1 to 5 to forthwith demolish the illegally constructed houses, compound wall constructed in the area named ''Olive Beach'' in S.No.114, Muttukadu Village, Kancheepuram District, Tamil Nadu, to restore the area to its previous pristine state and maintain the area free from any encroachment.

10. Learned counsel appearing for the petitioner in W.P.No.16083 of 2018 also contends that Muttukadu Panchayat has granted planning permission to an unapproved layout. The Panchayat President does not have power to grant any such planning permission under the Act. The power was delegated by the respondent authority to Muttukadu Panchayat to grant permission only up to 4000 sq.ft. for an approved layout. In the present case, all the plots situated in Survey No.114 were unapproved and, therefore, the planning permission was granted without any application of mind, which is totally illegal and liable to be set aside. He would further submit that in the case on hand all the plots are situated within 200 metres of the radius from the sea, which squarely falls within the purview of CRZ, in which case the Panchayat President can grant planning permission only if the CRZ granted prior approval for constructing any such buildings in the said plots. By referring to CRZ Regulations, he contends that the constructions put up by the petitioners in Survey No.114 are to be demolished at the cost of the owners and, therefore, he sought for appropriate orders from this Court.

11. We have given our due attention to the submissions made by the learned counsel on either side and also perused the material available on record.

12. The main issues that are to be decided in the present case are two fold, viz., (i) whether the Planning Permission granted by the President of Muttukadu Panchayat is illegal ? and (ii) whether principles of natural justice were followed by the respondent while taking action under Section 57 (4) of the Act ?

13. Issue No.1 : Originally, Mamallapuram Local Planning Authority is empowered to issue Planning Permission for any kind of development including ordinary residential building as per Section 49 of the Act. However, in order to reduce the burden of the developer to obtain permission from both the local planning authority and the local body, certain delegation of powers under Section 91 of the Act has been made to the local body to issue Planning Permission on behalf of Member Secretary, Mamallapuram Local Planning Authority up to a ceiling of

residential building having plinth area of 4000 sq.ft. in an approved layout as per the Director of Town and Country Planning Proceedings No.9862/2010, BA1, dated 14.06.2010, based on a declaration in Tamil Nadu Legislative Assembly, Housing and Urban Development announcement 2010-2011 by the then Hon'ble Housing Minister.

13.1. Therefore, as per the delegation of power, the President of Muttukadu Panchayat is empowered to issue Planning Permission only for the approved layouts/plots. In the present case, the plots situated in Survey No.114 are all unapproved. That being so, the President of Muttukadu Panchayat does not have any power to issue any Planning Permission to unapproved layouts/plots. As such, the Planning Permission issued by the President of Muttukadu Panchayat is in clear violation of the delegation of power and he has acted in excess of his powers.

13.2. That apart, in the case on hand, Survey No.114 falls within 200 metres from the High Tidal Line (HTL) of sea, which has been earmarked as 'No Development Zone' as per Coastal Regulation Zone (CRZ) Notification 2011, declared by the Ministry of Environment and Forests, Government of India, under the provisions of the Environmental Protection Act, 1986.

13.3. As per CRZ-III Notification, dated 06.01.2011, the following activities alone are permitted :

'III. CRZ-III,-

A. Area upto 200mts from HTL on the landward side in case of seafront and 100mts along tidal influenced water bodies or width of the creek whichever is less is to be earmarked as "No Development Zone (NDZ)",-

(i) the NDZ shall not be applicable in such area falling within any notified port limits;

(ii) No construction shall be permitted within NDZ except for repairs or reconstruction of existing authorized structure not exceeding existing Floor Space Index, existing plinth area and existing density and for permissible activities under the notification

including facilities essential for activities; Construction/ reconstruction of dwelling units of traditional coastal communities including fisherfolk may be permitted between 100 and 200 metres from the HTL along the seafront in accordance with a comprehensive plan prepared by the State Government or the Union territory in consultation with the traditional coastal communities including fisherfolk and incorporating the necessary disaster

management provision, sanitation and recommended by the concerned State or the Union territory CZMA to NCZMA for approval by MoEF;

(iii) however, the following activities may be permitted in NDZ -

(a) agriculture, horticulture, gardens, pasture, parks, play field, and forestry;

(b) projects relating to Department of Atomic Energy;

(c) mining of rare minerals;

(d) salt manufacture from seawater;

(e) facilities for receipt and storage of petroleum products and liquefied natural gas as specified in Annexure-II;

(f) facilities for regasification of liquefied natural gas subject to conditions as mentioned in subparagraph (ii) of paragraph 3;

(g) facilities for generating power by non conventional energy sources;

(h) Foreshore facilities for desalination plants and associated facilities;

(i) weather radars;

(j) construction of dispensaries, schools, public train shelter, community toilets, bridges, roads, provision of facilities for water supply, drainage, sewerage, crematoria, cemeteries and electric sub-station which are required for the local inhabitants may be permitted on a case to case basis by CZMA;

(k) construction of units or auxiliary thereto for domestic sewage, treatment and disposal with the prior approval of the concerned Pollution Control Board or Committee;

(l) facilities required for local fishing communities such as fish drying yards, auction halls, net mending yards, traditional boat building yards, ice plant, ice crushing units, fish curing facilities and the like;

(m) development of green field airport already permitted only at Navi Mumbai.

13.4. A bare perusal of the above provisions of the CRZ-III Regulations would clearly show that the construction of houses is not permitted in CRZ-III area and in fact an area up to 200 metres from the HTL of sea has been designated as 'No Development Zone'. However, in the present case, all the houses, compound walls and other constructions have admittedly been made within 200 metres from the HTL of sea. Therefore, all the houses developed and constructed in the area in question are illegal.

13.5. In this context, it is relevant to extract Paragraphs 13 to 18 of a Division Bench decision of this Court in W.P.No.23833 of 2014, dated 21.01.2020, which are as under :

"13.The Hon'ble Supreme Court of India in the recent decision reported in (2019) 7 SCC 248 in the case of The Kerala State Coastal Zone Management Authority vs. State of Kerala Maradu Municipality and others, taken up the issue relating to construction of very may flats in Maradu municipality at tidal influenced water bodies and after hearing the rival submissions, also constituted a Commission and the Commission's report was also submitted before the Hon'ble Supreme Court of India.

14.The Hon'ble Supreme Court of India, after extracting the notification dated 19.02.1991 relating to CRZ-III in paragraph 11 of the order and taking into consideration various decisions, in paragraph 18 observed as follows:

18. In the instant case, permission granted by the Panchayat was illegal and void. No such development activity could have taken place in prohibited zone. In view of the findings of the Enquiry Committee, let all the structures be removed forthwith within a period of one month from today and compliance be reported to this Court.

15.In the considered opinion of this Court, the second respondent is not vested with any authority under the Tamil Nadu Panchayats Building Rules to accord a Planning Permission to put up a super structure on a land falling under CRZ-III, which is a Non Development Zone and also an Inter Tidal Zone. The above said Judgement of the Hon'ble Supreme Court of India have full application to the facts of the case on hand. It is also relevant to refer to the super structure put up by the petitioner.



16.The petitioner, in order to protect the super structure from the path of sea, has put up many boulders without any prior permission, which would also lead to sea erosion at some places.

17.In the light of the above facts and circumstances, this Court is of the considered view that the super structure in question put up by the petitioner herein is to be demolished.

18.No tenable legal grounds have been made out by the petitioner as to the legality of the super structure, which came into the line of inter Tidal and Non Development Zone classified as CRZ-III in the above said notification."

13.6. Therefore, the permission granted by the President of Muttukadu Panchayat is totally illegal and, accordingly, the superstructures in question are liable to be demolished.

14. Issue No.2 : It is the contention of the petitioners that no notice was served on the petitioners. However, the respondent authority has submitted that they have served notice to all the owners of the plots situated in Survey No.114 as appeared in the revenue records. In support of their contention, the respondent has also referred to A-Register. On perusal of A-Register, it is clear that the respondent has served to all the vendors of the petitioners whose names appeared in the revenue records as owners of the plots. Once a sale is made, it is the duty of the buyer to mutate the revenue records. Since the petitioners have not mutated the revenue records, only the names of vendors appeared as the owners of the plots in question. Therefore, the respondent authority has sent notice under Section 107, which was returned as unserved, and thereafter a publication was effected and an affixure was also made on the buildings. In spite of that, no response emanated from the petitioners and finally the respondent put up placards under Section 57 (4) of the Act.

14.1. The lone contention of the petitioners with regard to service of notice was that had the notice been served on the petitioners, they would have produced Planning Permission issued by the President of Muttukadu Panchayat, thereby the action of the respondent under Section 57 (4) would have been averted.

14.2. We do not find any merit in the abovesaid contention of the petitioners. Even assuming that notice was served on the petitioners, they would have produced only the Planning Permission issued by the Panchayat Union.

14.3. As we have already held that the Planning Permission was issued by the Panchayat Union without any authority and it is illegal, the petitioners will not have anything further to improve their case. Therefore, we are of the view that serving of notice on the petitioners is an empty formality and it will not serve any purpose. The petitioners cannot improve their case further from the present situation. Even otherwise, the respondent has served notice in terms of Section 107 of the Act. Since the names of the petitioners did not appear in the revenue records due to the failure of the petitioners to mutate the revenue records, we are of the opinion that the respondent has served notice rightly to the owners of the plots, whose names existed in the revenue records.

14.4. The Hon'ble Supreme Court, in the case of Karnataka State Road Corporation and Another v. S.G.Kotturappa and Another, (2005) 3 SCC 409, has held that the question as to what extent the principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. They cannot be put in any straight jacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality.

14.5. Therefore, in the present case, the respondent has taken steps to comply with Section 107 of the Act while serving notice to the owners of the plots. Even if an opportunity is given to the petitioners, they cannot improve their case from the present situation. Accordingly, we are of the considered opinion that provision of one more opportunity to serve notice on the petitioners is only an empty formality, which is not required to be allowed. Hence, we do not see any violation of principles of natural justice in this case.

15. The case laws relied upon by the petitioners are not applicable to the facts of the present case.

16. In such view of the matter, We do not find any merit in W.P.Nos.35319/2012, 2459,4566 and 7834 of 2013 and they are dismissed.

17. The respondent, namely, the Member Secretary (Incharge), Mamallapuram Local Planning Authority, Chengalpattu I, in co-ordination with the Tamil Nadu Coastal Zone Management Authority, represented by its Member Secretary, Panagal Building, Saidapet, Chennai, along with the Collector of Kancheepuram District shall carry out the demolition of the super structures, as expeditiously as possible, bearing Plot Nos.18A, 32, 10 and 11, and 4, ECR Road, Muttukadu Village, Chengalpattu Taluk, Kancheepuram District, comprised in Survey

No.114 and also remove the boulders and the cost of the same shall be recoverable from the petitioners.

18. The Superintendents of Police, Chengalpattu and Kancheepuram Districts are also directed to accord necessary police protection for carrying out the said work as ordered in these Writ Petitions.

19. In view of the dismissal of the above Writ Petitions, namely, W.P.Nos.35319/2012, 2459,4566 and 7834 of 2013, no further orders are necessary in W.P.No.16083 of 2018 and it is, accordingly, disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The State of Tamilnadu,
rep.by its Secretary,
Department of Environment,
Fort St.George,
Chennai.
- 2.The Tamilnadu Coastal Zone Management Authority,
rep.by its Member Secretary,
Penangal Building, Saidapet,
Chennai.
- 3.The District Collector,
Collectorate, Gandhi Nagar,
Thaiyar Kullam,
Kancheepuram.
- 4.The Director, Directorate of Town and Country Planning,
807, Anna Salai, Chennai - 600 002.
- 5.The Member Secretary,
Mamallapuram Town and Country Planning Authority,
Five Rathas' Shopping Complex Venpurasam Salai,
Mamallapuram - 603 104.

6. The Principal Secretary to Government,
P.W.D., Secretariat,
Fort St.George,
Chennai-600 009.

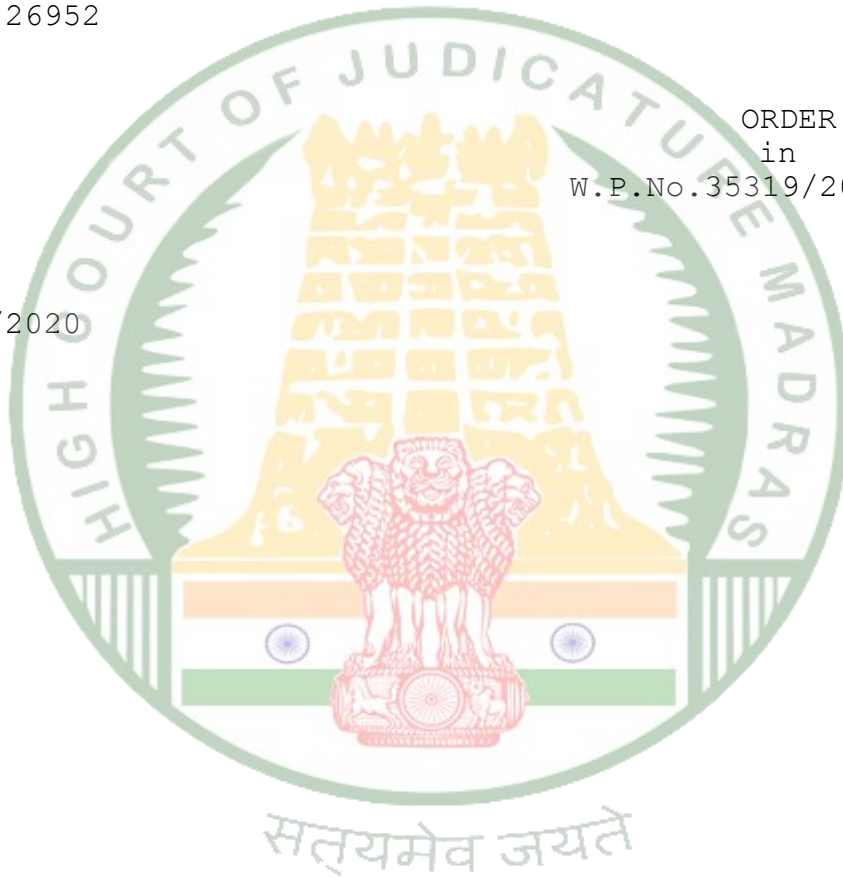
7.The Superintendent of Police,
Chengalpattu.

8.The Superintendent of Police,
Kancheepuram.

+5ccs to M/s.V.Raghavachari, Advocate in SR.NO. 26642, 26645 to
26647 and 26952

ORDER
in
W.P.No.35319/2012 & Batch

RJI (CO)
KKV/24/09/2020



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