

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.12.2020
Delivered on: 17.12.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P. Nos.15999, 16144, 16246, 16141, 16142, 16147, 16869,
16864, 16145, 16067, 16065, 16247, 16139, 16244, 16140, 16859,
16242, 16069, 16068 and 16143 of 2020

and

WMP Nos.20298, 20296, 20301, 20293, 20133, 20916,
20021,20131,20128200202092020132,20022,20017,20130,19909
20129,20125,20926,20127 of 2020

A.MYLEVAKANAN	... PETITIONER IN WP NO.15999 OF 2020
A.SARAVANAN	... PETITIONER IN WP NO.16144 OF 2020
R.BALASUBRAMANIAM	... PETITIONER IN WP NO.16246 OF 2020
C.G.M BUBHANESWARAN	... PETITIONER IN WP NO.16141 OF 2020
A.K. THANGAVEL	... PETITIONER in WP No.16142 of 2020
ARUMUGAM	... PETITIONER in WP No.16147 of 2020
C.PADMAVATHY	... PETITIONER in WP No.16869 of 2020
MR.KRISHNAMOORTHY	... PETITIONER in WP No.16864 of 2020
G.A.SHANMUGAM	... PETITIONER in WP No.16145 of 2020
J.GANAPATHI LAL	... PETITIONER in WP No.16067 of 2020
DEVARAJ	... PETITIONER in WP No.16065 of 2020
MAULANA	... PETITIONER in WP No.16247 of 2020
RAJA GOPALAN	... PETITIONER in WP No.16139 of 2020
GK GUNASEKARAN	... PETITIONER in WP No.16244 of 2020
M.SANTHAKUMAR	... PETITIONER in WP No.16140 of 2020
C.PADMAVATHY	... PETITIONER in WP No.16859 of 2020
M.R.NATARAJAN	... PETITIONER in WP No.16242 of 2020

M.SERARAM ... PETITIONER in WP No.16069 of 2020
MR. A. MOHAMED MUSTHAPA ... PETITIONER in WP No.16068 of 2020
THIRUMOORTHY ... PETITIONER in WP No.16143 of 2020

.Vs.

The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam,
Tamil Nadu. ...Respondent in all W.Ps.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records of the Respondent herein in Na.Ka. No.2190/2020/A3 dated 8.10.2020 and quash the same and consequently forbear the Respondent from determining the Petitioner's leasehold interests prior to 11.11.2025 except in accordance with law.(in all)

For Petitioner in
All Writ Petitions : Mr.Srinath Sridevan

For Respondent in
All Writ Petitions : Mr.V.Jayaprakash Narayan
State Government Pleader

COMMON ORDER

The petitioners in these batch of Writ Petitions have challenged the Impugned Notice issued by the respondent directing the petitioners to vacate and handover the Shops allotted to them by way of lease, on or before 30.11.2020. Since the issues involved in all these Writ Petitions are common, they were taken up together, heard and this Common Order is passed.

2. The case of the petitioners is that there is a daily market complex situated opposite to Periyar Thidal, Gobichettipalayam belonging to the respondent Municipality. This market complex has many small Shops measuring about 10ft.*15ft. The petitioners have been running small scale business in these Shops for quite a long time. According to the petitioners, the respondent Municipality renewed the lease period for the petitioners during the year 2016, 2017 and 2018, as the case may be, for a further period of 9 years. The Shops that were

allotted to the petitioners and the period for which the lease was renewed is explained by way of a Tabular Column is hereunder:

S. No	WP No.	Name of the petitioners	Shop No.	Lease Period
1.	15999/2020	A. Mylevakannan	8	01.07.2016 to 30.06.2025 (9 years)
2.	16065/2020	Mr. Devaraj	2	01.04.2018 to 31.03.2027 (9 years)
3.	16067/2020	Mr. J. Ganapathy Lal	5	01.04.2018 to 31.03.2027 (9 years)
4.	16068/2020	Mr.A Mohamed Musthapa	21	01.04.2018 to 31.03.2027 (9 years)
5.	16069/2020	Mr. M. Sreram	2	01.04.2018 to 31.03.2027 (9 years)
6.	16139/2020	Mr. Rajagopalan	13	01.04.2018 to 31.03.2027 (9 years)
7.	16140/2020	Mr. Santhakumar	19	01.04.2018 to 31.03.2027 (9 years)
8.	16141/2020	C.G M Bubhaneswaran	11	01.04.2018 to 31.03.2027 (9 years)
9.	16142/2020	Mr. A.K. Thangavel	14	01.04.2018 to 31.03.2027 (9 years)
10.	16143/2020	Mr.G.R. Thirumoorthy	6	01.04.2017 to 31.03.2026 (9 years)
11.	16144/2020	A. Saravanan	16	01.04.2018 to 31.03.2027 (9 years)
12.	16145/2020	Mr. G.A. Shanmugam	15	01.04.2018 to 31.03.2027 (9 years)
13.	16147/2020	Mr. Arumugam	17	01.04.2018 to 31.03.2027 (9 years)

14.	16242/2020	Mr. M.R. Natrajan	01	01.04.2018 to 31.03.2027 (9 years)
15.	16244/2020	Mr. G.K. Gunasekaran	18	01.04.2018 to 31.03.2027 (9 years)
16.	16246/2020	Mr.R. Balasubramaniam	20	01.04.2018 to 31.03.2027 (9 years)
17.	16247/2020	Maulana	7	01.07.2016 to 30.06.2025
18.	16859/2020	Mrs. C Padmavathy	10	01.04.2018 to 31.03.2027 (9 years)
19.	16864/2020	Mr. Krishnamoorthri	12	01.04.2018 to 31.03.2027 (9 years)
20.	16869/2020	Mrs. C. Padmavathy	9	01.04.2018 to 31.03.2027 (9 years)

3. During the pandemic period, the respondent Municipality issued Show Cause Notice to all the petitioners and other Shop keepers during September 2020, calling upon them to attend a meeting with the respondent. In the said Notice, it was informed to the petitioners and other shop keepers that they have been called for the meeting in order to discuss about their vacating and handing over the Shops to the Municipality.

4. It is alleged in the affidavit filed in support of the Writ Petition that the petitioners attended the meeting and they were informed that the market complex is going to be demolished since the building is in a dilapidated condition and the petitioners were informed that they will have to vacate and handover the Shops within a period of one month. Ultimately, the Impugned Notice came to be issued to all the petitioners directing them to vacate the Shops and handover possession to the Municipality on or before 30-11-2020. Aggrieved by the same, these Writ Petitions have been filed.

5. The respondent has filed counter affidavit. The relevant portions in the counter affidavit filed in Writ Petition No.15999 of 2020, are extracted hereunder:

"6. With regard to paragraph 3 of the affidavit it is submitted that, It is false to say that there was an auction for the lease of shop No.8 in the year 2016 and on 11.11.2016 the petitioner emerged successful bidder and

the respondent had awarded the lease of the shop No. 8 for a period of 9 years i.e., till 2025. It is false to say that over the years, the petitioner invested all his life savings in the upkeep of the shop. This respondent humbly submits that there was no auction on 11.11.2016 as alleged by the petitioner. The petitioner was a prior lessee and his lease was demanded to be renewed by way of revaluation of rent on 11.11.2016 for a period of 9 years.

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8. With regard to paragraph 7 & 8 of the affidavit, it is submitted that the communication dated 30.09.2020 issued by the respondent about demolishing the existing dilapidated market building and for construction a new complex is admitted and the calling for meeting 07.10.2020 for the further discussion in the above said communication is also admitted.

9 to 16

17. It is further respectfully submitted that the year of the construction has been engraved on the top of the Chinthamani Shop on 1934. The said Market was constructed at Sathy Main Road, Gopichettipalayam Ward-B, Block No.9, T.S.No.295/1, 295/2, 295/3, 296/1 & 296/2 in Veerapandi Village, Gopichettipalayam Municipality, Erode District. The reinforcement M.S. steel rod of the building exposed and fully corroded and lost it's nature. So, if the steel rod gets corroded roofs may felt down at any time. Therefore, the Municipal Engineer has inspected the building and found that the structural stability of the building is not sound and opined that the usage of building will be endangering to the habitants of the building. Based on his opinion it was decided to construct a new shopping complex with updated facilities. Accordingly, an application was made for approval for construction of shopping complex on 26/08/2019 and Director of Town and Country Planning office, Salem also has issued approval after inspection in ROC.No.1261/2019/DPR 2, dated 30-10-2019. The

Administrative sanction also granted by the Government of Tamilnadu for construction of shopping complex under Integrated Urban Development Mission (IUDM) 2020-2021 in G.O. (D)No.303, Municipal Administration and Water Supply (MA2) Department dated 09-09-2020 for work value of Rs.699.78 Lakhs. Thereafter, tender was also called for eligible persons for construction of the Shopping complex on 05.11.2020. The further process was stopped due to the interim orders passed in the batch of cases filed by the different shop owners including the Writ Petitioner.

18. It is further respectfully submitted that to ensure that stability of the structure necessary certificates has been issued by the qualified engineer from Erode District Panel of the approved engineer and the certificate state that based on Inspection dated 11.10.2019 and examination of the building referred above it was opined that various parts including the foundation with special referred to daily market shop are structurally not sound their stability will be endangered by their use as Public market. Thereafter also another certificate has been issued by Dr.S.Arulselven, Associate Professor of Department of Civil Engineering, Coimbatore Institute of Technology, Coimbatore -14 after he had inspected the building on 14.10.2019 certifying that the building is structurally not sound and endanger if used as Public market. The Stability certificates dated 19-10-2019 & 21-10-2019 issued by the respective experts may be treated as part and parcel of this affidavit.

19. It is respectfully submitted that the construction of the building is made in the year 1934 and based on the opinion of the experts the structural stability of the building is not sound and therefore it is not advisable to use the building as such and further it is endangering to occupants, and visitors of the premises. The risk is very high, since the building is situated in the main market area of Gopichettipalayam Municipality and it will attracts more visitors week days and more and more visitors during holidays.

20. It is further respectfully submitted that as per the provisions of Tamil Nadu District Municipalities Act 1920, which is a special enactment when dealing with the public safety, the sole respondent commissioner is empowered to take action to protect human life under section 218, 339(2), 340(1) of District Municipality Act. The respondent being authority under 218 of Tamil Nadu District Municipality Act 1920 cannot be a mute spectator when the experts' opinions say that the structural stability of the building is not fit for human habitation. The decision for construction of the new shopping complex was taken with a view to the safe guard human life in accordance with section 218 of District Municipality Act and also to mobilize more income for the Municipality to cater the needs of the Municipality. The respondent never exceeded his jurisdiction and properly exercised his powers conferred on him under the provisions of the District Municipality Act ensuring the public safety. The respondent has considered all submissions made by the petitioner and other lessees of the shops during the meeting and taken a decision in the interest of justice and in order to save the valuable human life including the petitioner. When the competent Civil Engineer after inspecting the building and giving report that the building is endangering to the occupants and passerby of the buildings it cannot be ignored easily.

6. Mr. Srinath Sridevan, learned counsel appearing for the petitioners made the following submissions:

i. The Show Cause Notice that was issued to the petitioners merely informed the petitioners that they are called for a meeting to inform them to vacate the shops on the ground that the existing market complex is going to be demolished and a new market complex is going to be constructed with all facilities.

ii. When the petitioners attend the meeting, they were not allowed to address anything about the condition of the building and they were only informed that they must be ready to vacate and handover the Shops in a month.

iii. The Show Cause Notice does not satisfy the requirements of Section 218 of the Tamil Nadu District Municipalities Act, 1920 (hereinafter after called as 'The Act') since there was absolutely no indication that the structure is in a ruinous state which requires an immediate demolition.

iv. The Impugned Notice was issued all of a sudden even without informing the basis on which the respondent came to a conclusion that the building is in a ruinous state and none of the reports relied upon in the counter affidavit was furnished to the petitioner.

v. The counter affidavit filed by the respondent clearly shows that the respondent has come to a conclusion to demolish the building one year ago and therefore, calling the petitioners for a discussion is only an empty formality and the respondent was pre-determined to evict the petitioners and take possession of the Shops.

vi. The reports relied upon by the respondent does not satisfy the requirements under Section 218 of the Act and in fact the report dt.21.10.2019 is a verbatim repetition of the earlier report dt. 19.10.2019.

vii. The petitioners have been given a 9 year lease as late as in the year 2016, 2017 and 2018, as the case may be and it is unbelievable that in the year 2019, all of a sudden the respondent finds the building in a ruinous state.

viii. What has been filed by the respondent in the typed set of papers are only two reports and some photographs and this is not the way to determine the structural stability of a building.

ix. Even though in the counter affidavit it is stated as if the complex was constructed in the year 1934, it is an apparent factual mistake since even as per the Impugned Notice, the age of the building is only 40 years.

x. The petitioners who have been given a lease for 9 years are sought to be evicted much before the lease period expires and while interfering with this right, the respondents will have to follow the due process of law and in the present case, the procedure adopted by the respondent is clearly violative of principles of natural Justice.

xi. The learned counsel in order to

substantiate his submissions relied upon the order passed by the Division Bench of this Court Manimeghalai vs. Commissioner, Pudukottai Municipality reported in (2018) SCC OnLine Mad 5010.

7. Mr.V. Jayaprakash Narayanan, learned State Government Pleader appearing for respondent apart from reiterating the contentions raised in the counter affidavit, made the following submissions:

i. G.O.Ms.No.92, dt. 30.11.2016, permits lease only for a period of 3 years at a time and no local authority can grant any period beyond 3 years and the maximum period up to which the lease can be renewed/extended is only for a period of 9 years subject to the periodical increase in the lease amount.

ii. The petitioners have been in possession of the Shops for a long number of years and the petitioners cannot claim for a 9 year lease period and the same will be in violation of the above said G.O.

iii. The respondent Municipality has come to a conclusion regarding the structural stability of the building based on the reports given by experts and the petitioners cannot be allowed to question the decision of an expert.

iv. The petitioners were called for a meeting only to decide the time required for vacating and handing over the Shops and the petitioners were never called to discuss with them on the condition of the building.

v. The report submitted by the expert and other materials relied upon clearly satisfies the requirements of Section 218 of the Act and it clearly explains the condition of the building.

vi. The decision was taken by the Municipality to demolish the building and construct a new market complex only on the ground that it will endanger the life of the occupants of the building and the respondent Municipality wanted to augment their revenue.

vii. The learned Government Pleader in order to substantiate his submissions relied upon the following orders passed by this Court:

(a) A. Anburathinam v. Karur Municipality

reported in (2012) SCC Online Mad 896;

(b) P. Ragupathi v. District Collector reported in (2019) SCC OnLine Mad 128700 and ;

(c) Shaikh Mohammed Bakurudeen v. Commissioner reported in (2019) SCC OnLine Mad 28111.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. There is no dispute with regard to the fact that the petitioners are lessees of the Shops owned by the respondent Municipality and all their lease period was extended in the year 2016, 2017 and 2018, as the case may be, for a period of 9 years. The petitioners were issued with Show Cause Notice during September 2020 and they were informed that the existing building is in a dilapidated condition and hence the Government has allotted funds for demolishing the existing structure and constructing a new building with all facilities. Therefore, the petitioners were called for a meeting to discuss about vacating the Shops and handing over possession to the respondent Municipality. After holding the meeting, the Impugned Notice has been issued by the respondent directing the petitioners and other Shop owners to vacate and handover the Shops on or before 30.11.2020.

10. The primary contention raised on the side of the petitioners is that, the reason cited for vacating them from the Shop was by pointing out the dilapidated condition of the building which requires immediate demolition. If that be so, the petitioners must have some say to express their opinion regarding the condition of the building. This minimum requirement could have been satisfied if the petitioners were provided with the materials relied upon to come to a conclusion that the building is in such a bad state. This is more so since the lease period has been renewed/extended only during the years 2016, 2017 and 2018, as the case may be. If the building is in such a bad state, there is no reason for the respondent to extend the lease period for 9 years and make the petitioners believe that they can continue with the business for some more years. The petitioners are doing small time business in these Shops and this is their only livelihood.

11. According to the respondent the building lacks structural stability and therefore action has been initiated under Section 218 of the Act. For proper appreciation, Section 218 of the Act, is extracted hereunder:

218. Precautions in case of dangerous structures. (1) If any structure appears to the [Executive Authority] to be in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures, the [Executive Authority] may, by notice, require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom. (2) If immediate action is necessary, the [Executive Authority] shall himself, before giving such notice or before the period of such notice expires, fence off, take down, secure or repair such structure or fence off a part of any street, or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 344. (3) If in the [opinion of the Executive Authority], the said structure is imminently dangerous to the inmates thereof, the [Executive Authority] shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer.

12. A plain reading of the above provision shows that the structure must be in a ruinous state and dangerous for occupation and also to passersby. Whether the building is in such a state can be assessed only based on the reports relied upon by the respondent. This Court is conscious of the fact that such reports cannot be normally questioned by this Court if it has been issued by experts. In the present case, there are two reports that are relied upon to determine the stability of the building. The first report is dt. 19.10.2019 and this is the finding that has been given in the said report:

I certify that I have inspected the daily Market buildings on 11.10.2019 referred to above and examines the various parts including the foundations with special referred to the Daily Market shops. These buildings are structurally not sound and their stability will be endangered by their use as Public Market. I therefore certify that the buildings may be demolished and new construction may be constructed.

13. The second report is dt. 21.10.2019 and this is the finding that has been given in the said report:

I certify that I have inspected the daily Market buildings on 11.10,2019 referred to above and examines the various parts including the foundations with special referred to the Daily Market shops. These buildings are structurally not sound and their stability will be endangered by their use as Public Market. I therefore certify that the buildings may be demolished and new construction may be constructed.

14. It is quite unfortunate that there is no change even in a single word in the above two reports and in fact the grammatical mistakes found in the first report is also verbatim repeated in the second report. In other words, the second report is nothing but a cut, copy and paste of the first report. There is a scientific way of ascertaining the stability of a building. The above two reports are far from it and it looks like the respondent wanted to have some report for record purpose only to justify the demolition of the building. Apart from the above two reports, some photographs have been filed in the typed set of papers and it will be too risky for this Court to give a finding on the structural stability of the building by just looking at photographs. The orders relied by the learned Government Pleader were all cases where there was an independent assessment of the building by an independent expert. Those cases cannot be cited as a precedent in the present case since the above two reports are completely unprofessional and the report does not even explain the basis on which such a conclusion was arrived at. This is a case where this Court is not sitting on judgment over a report of an expert. On the contrary, this Court has very serious doubts about the expertise that was employed by the two engineers to come to such a conclusion. It looks like the second report was prepared by just copying the first report even without conducting an inspection. Both these reports lack credentials and can never be the basis to assess the condition of the building.

15. Section 218 of the Act, emphasizes more on the ruinous condition of the structure which means that the structure must be so bad to occupy and its stability will be a danger for the passersby. In the considered view of this Court, the report relied upon by the respondent Municipality does not satisfy the requirements of Section 218 of the Act.

16. It is true that the petitioners cannot have too much say on the technical aspects about the condition of the building. That does not mean that the petitioners will not even be informed or shown the basis on which the respondents came to a conclusion with regard to the condition of the building. The

decision taken by the respondent Municipality is going to directly affect the livelihood of the petitioners whose lease period is admittedly in subsistence and therefore, the petitioners will surely have some say in giving their opinion on the condition of the building. It cannot be held that it will be a useless formality to provide opportunity to the petitioners to give their opinion on the condition of the building. In the present case, the petitioners were kept completely in dark with regard to the material that was relied upon to come to a conclusion regarding the stability of the structure. In fact, if the building is in such a ruinous state and a reasoned report is given by an expert, this report should be in the public domain in order for the petitioners to realize that occupying the building will no more be safe and it will endanger their lives.

17. The respondent Municipality seems to be improving the case at every stage. In the Show Cause Notice, the petitioners were informed that they are called for a meeting to discuss about their vacating the Shops on the ground that the building is in a dilapidated condition and a new structure is going to be put up with all facilities. In the Impugned Notice, the respondent Municipality has made the condition of the building sound as if it is in a ruinous state. In the counter affidavit, a stand has been taken that apart from the condition of the building, the respondent Municipality also took the decision in order to augment their income. During the course of argument, the learned Government Pleader questioned the very extension of lease period granted in favour of the petitioners on the ground that it is opposed to the Government Order. It looks like the respondent had taken a decision to demolish the building by vacating the existing lessees and for that purpose, was trying to find various reasons to justify the decision.

18. The decision taken by the respondent will touch upon the livelihood of the petitioners and it surely involves civil consequences. Therefore, the petitioners must know the ground on which they are sought to be evicted and the materials that are relied upon to justify the ground. The petitioners are entitled to give their opinion on the materials relied upon and question the grounds of their eviction. This is the minimum requirement to satisfy the principles of natural justice and that has not surely been followed in the present case. In the guise of giving an opportunity, what has been done by the respondent Municipality is that they have asked the petitioners to vacate and handover possession within the time fixed. This process adopted by the respondent is clearly in violation of the principles of natural justice.

19. The respondent Municipality has come up with a new ground in the counter affidavit as if the Municipality wants to augment the income from the Shop. There is absolutely no doubt that this Court has repeatedly held that any commercial decision taken by the local body to augment their income, should not be normally interfered by this Court. In the present case, this was not the ground on which the eviction was sought for. That apart, a decision of this nature should not have been taken during this pandemic period when already all the establishments were closed down for nearly six months and there was absolutely no business for the petitioners and when they were about to start their business after the lock down was lifted, the Impugned Notice issued by the respondent Municipality came as a bolt from the blue for the petitioners.

20. In view of the above discussion, the Impugned Notice issued by the respondent Municipality to each of the petitioner is liable to be interfered by this Court and accordingly, the same is quashed. The respondent is directed to appoint an independent expert to assess the stability of the structure in a scientific manner and get a report from the expert. If the report points out that the building is in a ruinous state and it will endanger lives, thereafter fresh notices shall be issued to lessees and they shall be called for an enquiry. The lessees shall be permitted to go through the report in order to understand the basis on which the expert has arrived at such a conclusion. Thereafter, their explanation can be considered and a decision can be taken by the respondent Municipality. This process shall be completed by the respondent Municipality within three months from the date of receipt of a copy of this order.

21. In the result, all these Writ Petitions are allowed with the above directions. No costs. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

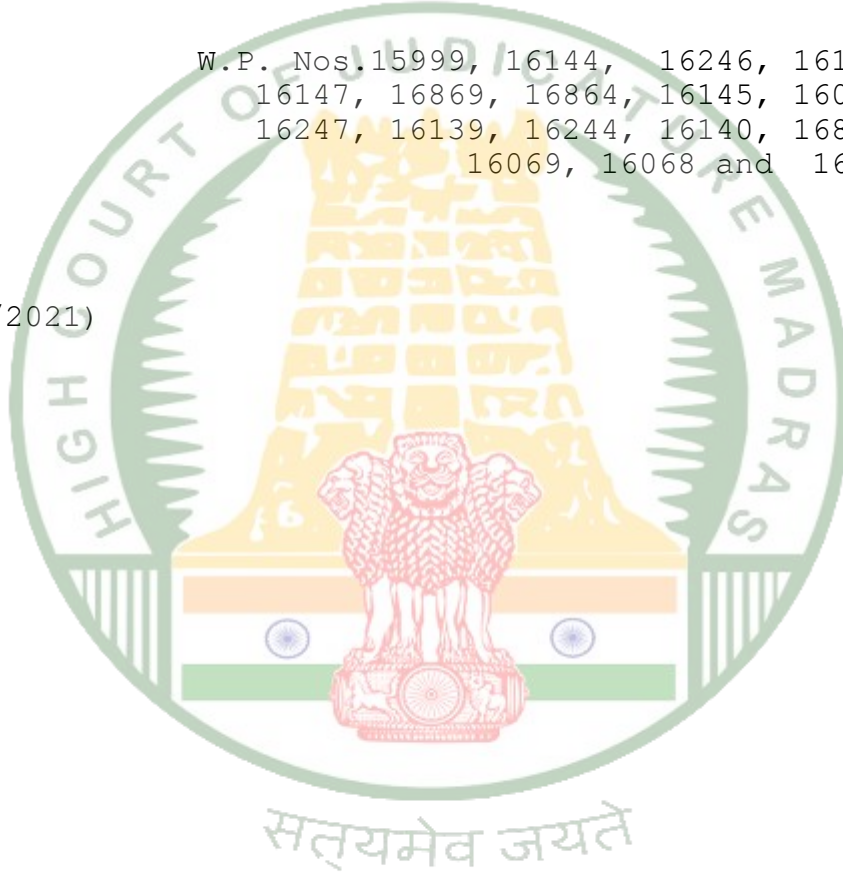
KP

To
The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam,
Tamil Nadu.

+20ccs to Mr.Srinath Sridevan, Advocate, Sr.No. 41651
+1 cc to M/s.V.Jayapraksh Narayanan, Advocate Sr.No. 42047

W.P. Nos.15999, 16144, 16246, 16141, 16142,
16147, 16869, 16864, 16145, 16067, 16065,
16247, 16139, 16244, 16140, 16859, 16242,
16069, 16068 and 16143 of 2020

RV (CO)
RMP (29/01/2021)



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