



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)Nos.24380, 23990 to 23999, 24002 to 24010, 24381 to 24383,
25172 of 2018 and 9793 to 9798 of 2019

and

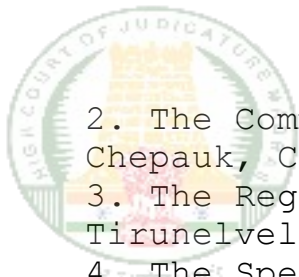
WMP(MD)Nos.21692 to 21711, 21713 to 21721, 22068 to 22071, 22801
of 2018, 7675, 7676 to 7678, 7679, 7680 of 2019

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Kumaravelrajan	.. Petitioner in WP(MD). 24380/ 2018
M.Mohamed Yaser Sikkandar	Arapadh,
	... Petitioner in WP(MD). 23990/ 2018
N.Periyasamy,	... Petitioner in WP(MD). 23991/ 2018
Thamimun Ansari,	... Petitioner in WP(MD). 23992/ 2018
S.Syed Abuthhakir Ali	... Petitioner in WP(MD). 23993/ 2018
M.Haroon Razeed	... Petitioner in WP(MD). 23994/ 2018
M.Mahendran,	... Petitioner in WP(MD). 23995/ 2018
Salim Badhusha	... Petitioner in WP(MD). 23996/ 2018
M.Zahir Hussain,	... Petitioner in WP(MD). 23997/ 2018
R.Yogan, S/o.M.Rasu,	... Petitioner in WP(MD). 23998/ 2018
Gopalakrishnan	... Petitioner in WP(MD). 23999/ 2018
Mohamed Yusuf,	... Petitioner in WP(MD). 24002/ 2018
Munirajpandian	... Petitioner in WP(MD). 24003/ 2018
Jeyapal,	... Petitioner in WPs(MD). 24004,
	24005,24006, 24007,24008,24009, 24010/ 2018
A.N.Arun,	... Petitioner in WP(MD). 24381/ 2018
P.S.S.Ganapathi	.. Petitioner in WP(MD). 24382/ 2018
Edisonraja,	... Petitioner in WP(MD). 24383/ 2018
Mariappan @ Perumal,	... Petitioner in WP(MD). 25172/ 2018
Chitra	... Petitioner in WPs(MD).
	9793,9794,9795,9796,
	9797,9798/ 2019
	- Vs. -

1. The Secretary to Government,
Municipal Administration & Water Supply Department,
Government of Tamil Nadu, Fort St. George, Chennai-9

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2. The Commissioner of Municipal Administration,
Chepauk, Chennai-5.
3. The Regional Director Of Municipal Administration,
Tirunelveli.
4. The Special Officer,
Virudhunagar Municipal Council, Virudhunagar.
5. The Commissioner, Virudhunagar Municipality,
Virudhunagar District

... Respondents in WP(MD). 24380/ 2018

1. The Commissioner, Virudhunagar Municipality, Virudhunagar.
2. The Municipal Engineer Virudhunagar Municipality,
Virudhunagar.

... Respondents in WP(MD). 23990, 23991, 23992, 23993, 23994,
23995, 23996, 23997, 23998, 23999/ 2018

1. The Secretary to Government Municipal Administration & Water
Supply Dept., Government of Tamil Nadu, Fort St. George,
Chennai 600 009.
2. The Commissioner of Municipal Administration,
Chepauk, Chennai 600 005.
3. The Regional Director Of Municipal Administration,
Tirunelveli.
4. The Special Officer, Virudhunagar Municipal Council,
Virudhunagar.
5. The Commissioner Virudhunagar Municipality, Virudhunagar
District

... Respondents in WP(MD). 24002, 24003, 24004, 24005, 24006,
24007, 24008, 24009, 24010, 24381, 24382, 24383, 25172 / 2018

1. The Commissioner Virudhunagar Municipality, Virudhunagar
2. The Special Officer
Virudhunagar Municipal Council, Virudhunagar

... Respondents in WP(MD). 9793, 9794, 9795, 9796, 9797, 9798 / 2019

Prayer in WP(MD). 24380/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.10, MSP nadar Old Bus Stand, Virudhunagar.



Common Prayer in WP(MD)Nos. 23990 to 23999/ 2018 :

Writ Petitions filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 1st respondent in Na.Ka.No.7825 / 2015 / A1 dated 15/10/2018 and quash the same and further directing the respondents to refix the rent based on rational and method.

Prayer in WP(MD). 24002/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same as illegal and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.8 Katchery Road, MSP Raja Commercial Complex, Virudhunagar.

Prayer in WP(MD). 24003/ 2018 :

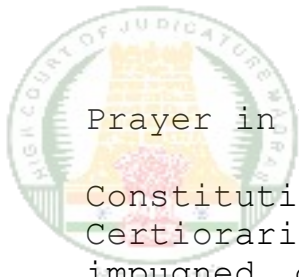
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same as illegal and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.2 Santhu Bazaar Shop, Virudhunagar .

Prayer in WP(MD). 24004/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.1 MSP nadar old bus stand, Virudhunagar.

Prayer in WP(MD). 24005/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.2 MSP nadar old bus stand, Virudhunagar.



Prayer in WP(MD). 24006/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.3 MSP nadar old bus stand, Virudhunagar.

Prayer in WP(MD). 24007/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.4 MSP nadar old bus stand, Virudhunagar.

Prayer in WP(MD). 24008/ 2018 :

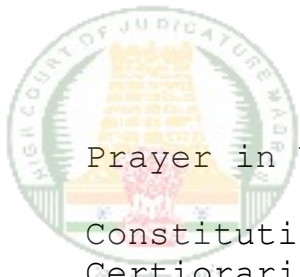
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.5 MSP nadar old bus stand, Virudhunagar.

Prayer in WP(MD). 24009/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same as illegal and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.6, MSP nadir old bus stand, Virudhunagar .

Prayer in WP(MD). 24010/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.18 MSP nadar old bus stand, Virudhunagar.



Prayer in WP(MD). 24381/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Aavin Milk Shop in MSP Nadar Old Bus Stand Aavin Milk Shop, Virudhunagar.

Prayer in WP(MD). 24382/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.12, MSP nadar Old Bus Stand, Virudhunagar.

Prayer in WP(MD). 24383/ 2018 :

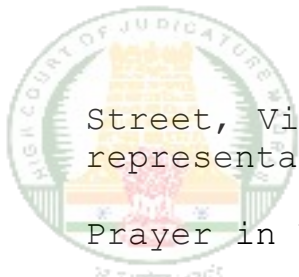
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825/2015/A1 dated 15.10.2018 quash the same and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop No.17, MSP Nadar Old Bus Stand, Virudhunagar.

Prayer in WP(MD). 25172/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus calling for the records relating to the impugned order of the 5th respondent in Na.Ka.No.7825 / 2015 / A1 dated 15/10/2018 and quash the same as illegal and consequently direct the 5th respondent to receive the 15% enhanced lease amount from the petitioner on the previous lease rent paid for Shop.No.3, Sankaran Kinatru Street, Virudhunagar .

Prayer in WP(MD). 9793/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No. 7825/15/A1 dated 05.01.2018 for Shop No. 4, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No. 4, Sankaran Kinatru



Street, Virudhunagar until the final orders passed on petitioner's representation dated 06.04.2019.

Prayer in WP(MD). 9794/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No. 7825/15/A1 dated 05.01.2018 for Shop No. 5, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No.5, Sankaran Kinatru Street, Virudhunagar until the final orders passed on petitioners representation dated 06.04.2019.

Prayer in WP(MD). 9795/ 2019 :

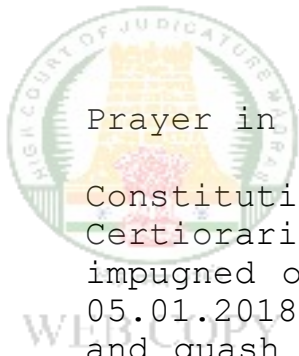
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No.7825/15/A1 dated 05.01.2018 for Shop No.6, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No.6, Sankaran Kinatru Street, Virudhunagar until the final orders passed on petitioners representation dated 06.04.2019.

Prayer in WP(MD). 9796/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No.7825/15/A1 dated 05.01.2018 for Shop No.7, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No.7, Sankaran Kinatru Street, Virudhunagar until the final orders passed on petitioners representation dated 06.04.2019.

Prayer in WP(MD). 9797/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No.7825/15/A1 dated 05.01.2018 for Shop No.8, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No.8, Sankaran Kinatru Street, Virudhunagar until the final orders passed on petitioners representation dated 06.04.2019.



Prayer in WP(MD). 9798/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus, calling for the records relating to the impugned order of the 1st respondent in Na.Ka.No.7825/15/A1 dated 05.01.2018 for Shop No.9, Sankaran Kinatru Street, Virudhunagar and quash the same as illegal and consequently forbearing the 1st respondent from evicting petitioner's shop No.9, Sankaran Kinatru Street, Virudhunagar until the final orders passed on petitioners representation dated 06.04.2019.

For Petitioner : Mr.G.Mariappan
in WP(MD).24380,24002 to 24010, 24381,
24382, 24383,25172 of 2018 &
WP(MD).9793 to 9798 of 2019

: Mr.G.Prabhu Rajadurai
in WP(MD).23990 to 23999 of 2018

For Government Officials: Mrs.J.Padmavathi Devi,
Special Government Pleader

For Municipality : Mr.Muthugeethaiyan

COMMON ORDER

Since the issue involved in all these writ petitions is similar, they are disposed of by this common order.

2.The petitioners in this batch of writ petitions are all lessees with the Commissioner, Virudhunagar Municipality. The lease was based on monthly rental and the petitioners have been paying the rent without any default and there is no arrears till date. Admittedly, the lease period expired on 31.03.2016. While so, the Commissioner/Virudhunagar Municipality issued the proceedings in Na.Ka.No.7825/2015/A1 dated 22.05.2017 stating that a committee has been formed to revise the lease amount. It is also stated that the rent fixation committee had refixed the lease amount and the Commissioner was directed to collect the revised rent. Accordingly, the Commissioner/Virudhunagar Municipality also sent a communication on 04.10.2017, directing the petitioners to execute a consent letter for the revised lease amount. The said notice was put to challenge before this Court and this Court passed the following order:

"6.Following the above order and also considering the fact the said judgment is squarely applicable to the facts of the present cases on hand, these writ petitions are disposed of with the following directions:

i)the fifth respondent Municipality is directed to provide a copy of the report of the Committee as well as



the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners/lease holders to deposit 50% of the enhanced rent immediately and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted within a period of two weeks from the date of receipt of a copy of this order and thereafter file their objections supported by whatever documents they have in their possession to the concerned authority; and

iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or re-fix the lease rent in accordance with law within a period of two weeks thereafter.

iv) in the event of the petitioners not complying with the conditions stipulated above, it is open to the concerned authorities, to proceed further in the manner known to law."

3. Pursuant to the abovesaid order of this Court and as per the communication of the Commissioner/Virudhunagar Municipality dated 05.01.2018 it is stated that 50% of the enhanced rent has been deposited. While depositing 50%, the petitioners also had submitted their objections for the above said enhancement. In the meanwhile, the Commissioner/Virudhunagar Municipality passed an order in Na.Ka.No.7825/2015/A1 dated 15.10.2018 stating that the rent was fixed according to the technical report of the Municipality Technical Engineer and called upon the petitioners to pay the arrears of rent, failing which, the leasehold right will be terminated. Now, the said orders dated 05.01.2018 and 15.10.2018 re-fixing the rent are challenged before this Court.

4. At the time of admission, this Court had granted an order of interim stay on condition that the petitioners shall deposit 50% of the enhanced rent from 31.12.2017 till date with a default clause. It is now stated that the petitioners have already paid 50% of the enhanced rent, however, from 31.12.2017 only.

5. The writ petitions are resisted by the Commissioner of Virudhunagar Municipality by way of filing counter affidavit, wherein it has been stated that the petitioners' lease had expired on 31.03.2016 and the respondent Municipality had directed the petitioners to give consent letter by accepting the enhanced lease rent from 01.04.2016 for further occupation of 3 years. It is also stated that such undertaking affidavits have been filed by the



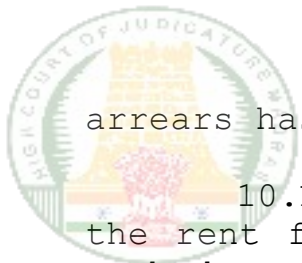
petitioners in WP(MD)Nos.24002 to 24010 of 2018 before the Commissioner, Virudhunagar Municipality.

6.The respondent Municipality had also issued a notice dated 22.05.2017 to all the licensees to pay the enhanced lease amount to their respective shops and the said communication was challenged before this Court. The Commissioner, Virudhunagar Municipality had further stated in the counter that while refixing the rent, they have adopted three methods. Admittedly, the building is built with brick with lime mortar (or) cement mortar, in which, country wood has been used throughout. The first method adopted by the respondent is based on the value of the building, taking into consideration the plinth area of the shop and the cost of the land, in addition, miscellaneous items viz., the amenities provided. The second method adopted is 15% of amount added from the current lease rate and the third method adopted is going by the current market rate of the shop. While refixing the rent, the respondents have worked out in all the above three methods and fixed the rent, whichever is higher. Now, the petitioners are aggrieved by the said rent fixed.

7.It cannot be stated that the above said method of fixing the rent was done by the respondents without hearing the objections of the petitioners, as this Court has specifically directed the petitioners to file their objections and documents with the condition to pay 50% of the enhanced lease rent and on such remittance, the authorities are directed to scrutinize the documents produced by the writ petitioners and then arrive at the rent payable. Though the writ petitioners had stated that their objections were not considered, it is accepted by them that the respondents have adopted three methods in fixing the rent, as the same is within their domain.

8.The learned counsel for the fifth respondent contended that the Committee formed by the Commissioner for fixing the rent afresh was directed to determine the rent payable from 01.07.2016. Therefore, the petitioners have to pay the rent from 01.07.2016.

9.The said contention is assailed by the petitioners stating that subsequently the demand notices mentioned only the rent payable from 01.04.2017. The same is evident from the communication issued by the Commissioner dated 22.05.2017 in proceedings in Na.Ka.No.7825/2015/A1. The said notice specifically states that the lease period got over on 31.03.2016 and as per G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 the refixed rent is payable only from 01.04.2017. Even at the time of granting interim order, this Court had directed the payment of 50% of the enhanced rent from 31.12.2017. The learned counsel for the petitioners also agreed that the enhanced rent is from 01.04.2017. Hence, the payment of



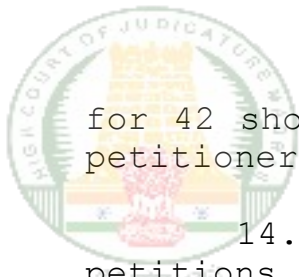
arrears has to be reckoned with 01.04.2017.

10.Now, the question arises for determination is whether the rent fixed by the Municipality is correct based on the three methods adopted by them. In the counter affidavit the Commissioner, Virudhunagar Municipality has explained that the third method of calculation has been adopted by obtaining the statements from the neighbouring shop owners and based on that, the current market rate per square meter of the shop has been fixed for monthly rent. Therefore, fixing of enhanced rent to the writ petitioners, the other licencees as well as to the respective shop holders, enable them to have their occupation after the expiry period of 9 years as licencees, on condition to pay the enhanced rent as per the G.O.No.92, based on which they are in occupation and the same has also been upheld by the Division Bench of this Court in the case of **V.Ranganathan V. The State of Tamil Nadu, rep.by its Secretary to Government, Municipal Administration & Water Supply Department, Chennai & Others [W.P.No.15932 of 2018]**.

11.Even as per the said Government Order, after expiry of 9 years period, if the licensees are to continue to be in possession, they should be agreeable for the rent that may be fixed by the Municipality. The Municipality also states that they are facing financial crisis and it is unable to get the revenue augmented for payment of its own staff and if the licencees or lessees are allowed to occupy for decades together without any enhancement of rent, it will cripple the functioning of the municipality without having funds even to meet out the major expenses, like maintaining the street lights etc.,

12.The Division Bench in *W.P.No.15932 of 2018 (stated supra)* while upholding the validity of the Government Order had held that renewal of the existing lease on the basis of increase in rent after nine years cannot be stated to be arbitrary, even though the period of lease got over and the shops in question were not put to public auction and it is only in compliance with the procedures adopted by the Municipality by following the rent fixed by the Committee.

13.The learned counsel for the petitioners also left with no choice agreed to pay the enhanced rent that is fixed. It is stated by the petitioners that they have already paid 50% of the enhanced rent from 31.12.2017, though they have to pay the rent from 01.04.2017. Therefore, they agreed to pay the arrears from 01.04.2017 along with the remaining 50% of the arrears. It is also mentioned that more than 42 shops out of 400 shops are now closed as those licensees have vacated not accepting the rent fixed. It is also stated that on 26.02.2020 auction is scheduled to be fixed



for 42 shops and the said 42 shops are not related to the present petitioners.

14. In the light of the above discussions, these writ petitions are disposed of with the following directions:

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(i) the petitioners have to pay the rent in full from 01.04.2017 till 31.12.2017

(ii) 50% of the arrears to be paid from 01.01.2018 to till date and the said arrears has to be paid on or before 30th April, 2020.

(iii) The current monthly rent has to be paid on or before 5th of every English Calendar month without fail.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. The Secretary to Government,
Municipal Administration & Water Supply Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Municipal Administration,
Chepauk, Chennai - 600 005.

3. The Regional Director of Municipal Administration, Tirunelveli.

4. The Special Officer, Virudhunagar Municipal Council,
Virudhunagar.

+4CC TO MR.M.MUTHGEETHAYAN, Advocate

Sr. No. 7182, 7183, 7184, 7185

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 7272, 7273, 7274

W.P(MD)Nos.24380, 23990 to 23999,
24002 to 24010, 24381 to 24383, 25172 of 2018
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