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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.09.2020
PRONOUNCED ON : 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.16254 OF 2015

Arumugam

... Petitioner

.Vs.

1. The Inspector General of Police,
North Zone, Alandur,
Chennai.
2. The Superintendent of Police,
Vellore District,
Vellore.
3. The Deputy Superintendent of Police,
Arakkonam,
Vellore District.
4. The Sub Inspector of Police,
Avalur Police Station,
Avalur, Arakkonam Taluk,
Vellore District.
5. Pichandi
6. Thoguthi (a) Munuswamy
7. Kesavan
8. Elumalai
9. Ramanujam
10. Arumugam
11. Ramesh
12. Dhamodharan
13. Kumaresan
14. Amirthalangam
15. Manogaran

... Respondents

PRAYER:-

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to issue direction to the respondents 1 to 4 to provide police protection to the petitioner's family members, staffs and their property to enjoy peacefully on receiving payment of costs from the petitioner.



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For Petitioner : Mr.P.Krishnan

For R1 to R4 : Mr.K.Prabakar,
Additional Public Prosecutor

For R5 to R15 : Mr.B.Sundarapandiyan

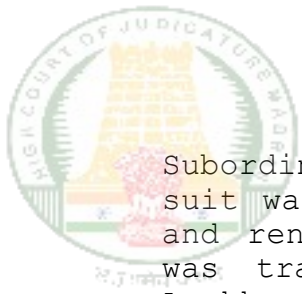
ORDER

This Criminal Original Petition has been filed by the petitioner seeking direction to the respondents 1 to 4 to give police protection to him, his staffs and the property situated at Perumpulipakkam Village in survey Nos.342/1-6.59 acres, in survey No.354/1-14.87 acres, in survey No.354/2-0.4 acres, totally 22.30 acres.

2. The submissions of the learned counsel for the petitioner is as follows:-

(i) One P.Venkatachala Chettiyar, the grandfather of the petitioner owned 26 items of properties situated in and around Chennai. During his life time, he had executed a Will dated 01.10.1932 relating to the aforesaid properties and appointed his brother-in-law K.Natesa Chettiyar, Somasundara Chettiyar and his wife Senthamarai as executors. In the Will, 18th item property is the disputed property. The said Venkatachala Chettiyar appointed his brother Vadivel Chettiyar to maintain the said property and to keep a water panthal during festival and carry on the charity, to maintain account of receipts and expenses relating to the property income and produce the same to his elder brother Govindasamy Chettiyar. The said Venkatachala Chettiyar died on 22.03.1933 and the Will dated 01.10.1932 is the last Will executed by him, which was probated by this Court on 26.03.1935 in O.P.No.48 of 1935. After the death of Venkatachala Chettiyar, the said Vadivelu Chettiyar had set up water panthal and carried on the work and he also died intestate. After the demise of Venkatachala Chettiyar, the wife of Venkatachala Chettiyar had taken possession, appointed one Venugopal to manage the property and carry on with the charity work. Since she was unable to cultivate the lands, the lands were leased out by registered deed of lease dated 27.07.1964 in favour of Rathinavelu Naicker and Sanjeevipillai in document No.1559 of 1964. The period of lease is for three years and by consent of parties, it can be renewed. The said Senthamarai died intestate on 25.07.1976 leaving her legal heirs.

(ii) After the death of Senthamarai, the original tenants subleased the property to others. The legal heirs of Senthamarai filed a suit in O.S.No.227 of 1977 before the learned



Subordinate Judge, Vellore for declaration and possession. The suit was transferred to the Court of District Munsif, Sholingur and renumbered as O.S.NO.187 of 1981. Subsequently, the suit was transferred to the file of the District Munsif Court, Arakkonam and renumbered as O.S.No.102 of 1986. The learned District Munsif, Arakkonam after the period of three decades decreed the suit on 16.12.2007 in favour of plaintiff therein. On 10.01.2008, Perumpulipakkam Village Gramanattamai A.S.Muthu, K.Subramani, S.Krishnan and six others approached the power agent of the petitioner's family member viz., V.Durairaj and demanded a sum of Rs.40,00,000/-. From the original lease holders namely Rathinavelu Naicker and Sanjeevipillai, the Gramanattamai and some villagers had taken possession of the said property and subleased the same to various persons for higher amount. The amount collected was utilized by the said Nattamai and the villagers for village festival held in the village. The demand of Rs.40,00,000/- from Durairaj was made in the name of village and the interest derived from the said amount has to be utilized for Perumpulipakkam village festival. Later to that effect a letter dated 10.01.2008 was executed in a Non-Judicial Stamp Paper and signed by Gramanattamai and eight others and the same was sent to the Tahsildar, Arakkonam. They also gave an undertaking that they have no objection to transfer the patta in favour of Venkatachalam Chettiyar. This amount of Rs.40,00,000/- could not be paid immediately and only Rs.20,00,000/- was given. A trust in the name of 'Perumpulipakkam Sankarampadi Chathira Charitable Trust' was formed and registered as document No.441 of 2008, dated 11.02.2008 on the file of Sub Registrar Office, Kaveripakkam. After formation of the trust, a bank account was opened in Canara Bank, Kalathur Village Branch and Rs.20,00,000/- was paid through cheque by the power agent of the petitioner's family.

(iii) There seems to be some dispute among the villagers and some developed enmity towards the said trust. The rival group attempted to extract money from the petitioner's family. Since the petitioner was not willing and yielded to the demand, one Amirthalingam lodged a complaint dated 20.03.2008 before the Revenue Divisional Officer, Ranipet and one Pitchandi lodged a complaint dated 10.04.2008 and Dhamodhara Pillar lodged a complaint, with the allegations that the said lands do not belong to the petitioner's family and it belongs to Chathiram and they were in possession for more than 100 years. In spite of civil Court decree dated 06.12.2007 in favour of the petitioner and the amount of Rs.20,00,000/- paid to Perumpulipakkam Sankarampadi Chathira Charitable Trust, the judgment debtors failed to vacate the encroachments colluding with the rival groups in the village. Hence, the petitioner's family filed Execution Petition in E.P.No.4 of 2008 before the learned District Munsif, Arakonam. The possession of the property was



taken over by the Court Bailiff on 03.03.2010. Recording the same, the Execution Petition was closed on 01.04.2010. When the petitioner attempted to fence his property, some of the villagers and others started giving trouble and removed the boundary pillars from the lands. Hence, a complaint was lodged to the Police.

(iv) As per the orders of the learned District Munsif, Arakonam, the decree holders performed their charity works in the year 2010 and 2011 during Karudaseva Brahmotchavam. In order to grab the petitioner's property, the Village President Pitchandi instigated one K.S.Dhamodharan Pillai to put up water pandhal in the petitioner's property and also filed a Writ Petition in W.P.No.14164 of 2012 seeking Police protection. Though the petitioner's family was shown as respondents 8 to 12, this Court without issuing notice to the petitioner's family dismissed the Writ Petition by order, dated 06.06.2012 and observed that the petitioner therein had no right and claim for such a practise in the absence of any customary right being recognized by the Department. Thereafter, the Assistant Commissioner, Hindu Religious and Charitable Endowment, Vellore appointed a fit person on 21.12.2009, which was not implemented and the petitioner was not aware of the same. The petitioner came to know about the same during the proceedings in W.P.No.3984 of 2010. Immediately, the petitioner challenged the same, before the Commissioner, Hindu Religious and Charitable Endowment, Vellore in R.P.No.141 of 2013. The Commissioner dismissed the said application by order, dated 26.02.2014. Challenging the two orders, the petitioner's family filed Writ Petition before this Court in W.P.No.13101 of 2014. This Court on 02.06.2014 had passed detailed order granting stay of the order of appointment of a fit person, with undertaking affidavit to be filed that the property in question will not be alienated or encumbered. Thereafter, the undertaking affidavit filed. After the orders passed by this Court on 02.06.2014, the villagers of Perumpulipakkam again obstructed the petitioner in performing Annadhanam and putting up water panthel. Hence, a complaint dated 25.05.2015 was lodged to the 4th respondent Police seeking protection as well as to take action against Pitchandi for creating false lease deed over the petitioner's property.

(v) There are attempts by the villagers and others to extract money from the petitioner and to grab the petitioner's property. The said Pitchandi and others issued pamphlets on 23.05.2015 in the village that Gramamnatamai, Villagers and Thakkar/Executive Officer of the Arulmigu Lakshmi Narasimhaswamy Koil, Sholingur, proposed to put up water pandhal, Annadhanam during the Brahmotsavam. Again, a complaint was lodged on 25.05.2015 by the petitioner. On 13.06.2015, the petitioner made



arrangement to plough the lands by using tractor and also to sow groundnut seeds which was disturbed and damaged. On that day, the petitioner lodged a complaint dated 15.05.2015 to the 4th respondent Police. Thus, there have been disturbance and obstruction by the villagers in the name of the trust over the petitioner's ancestral property which came through the Will executed in the year 1932 and probated by this Court in the year 1935. The civil court had decreed the suit in favour of the petitioner in O.S.No.102 of 1986 and the possession was taken through the execution proceedings. Despite the same, the property is projected as though it is a temple land which has been encroached by the petitioner's family and the Tahsildar also issued patta in the name of temple, on appeal, the Revenue Divisional Officer held back the same stating that there are several cases pending between rival groups. The Assistant Commissioner, Hindu Religious and Charitable and Endowment, Vellore filed his counter objections not to issue patta in the name of any individual. Hence, the patta was not issued in the name of any individual.

(vi) In the civil suit in O.S.No.102 of 1986, the Will dated 01.10.1932 marked as Ex.P2. The categorical finding of the civil Court is that the petitioner is entitled for possession and enjoyment of the property in dispute. After cancellation of patta by the Tahsildar, Arakonam, the petitioner approached this Court in W.P.No.3984 of 2010 and obtained an injunction that the petitioner's possession and enjoyment not should be disturbed. Finally, the Writ Petition in W.P.No.3984 of 2010 came to be dismissed on 20.07.2011. Challenging the same, a Writ Appeal in W.A.No.2004 of 2011 was filed, wherein the Hon'ble Division Bench of this Court held that the observation made by the learned Single Judge would not have any influence on the decision to be made by the authority or form concerned when an appropriate application is made by the petitioner with regard to the character and nature of the water pandhal charity concerned. The petitioner has now approached the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore and has filed appropriate petition. Further, the claim of Damodhara Pillai seeking Police protection to provide Annadhanam during Brahmotsavam for 10 days function by him along with village people in Sankarampadi Chathiram was negated by this Court in W.P.No.14164 of 2012, dated 06.06.2012. For the year 2015 Brahmotsavam, the petitioner approached this Court in W.P.No.15388 of 2015, in which this Court by order dated 29.05.2015 had directed the Police to provide protection to perform Annadhanam and install water pandhal. The petitioner's family on the observation made in W.A.No.2004 of 2011 had filed O.A.No.2 of 2015 before the Joint Commissioner, HR and CE (Admin) Department, Vellore to decide the character and nature of Water Pandhal charity concern as per the Will dated

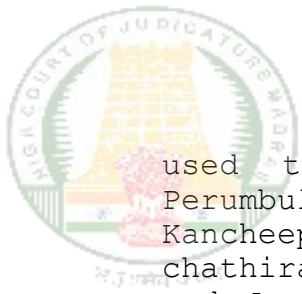


01.10.1932 executed by Venkatasamy Chettiyar, which is yet to be decided. One thing is certain that the petitioner has got possession of the property by the civil suit. The possession and enjoyment of the property, there seems to be claim and rival claim with regard to the religious nature and charitable grant of the land between the petitioners and the villagers in the name of the trust. There have been constant filing of complaints and cases before the Revenue Authority, the Hindu Religious and Charitable Endowment Department and before this Court by way of Writ Petitions and Writ Appeals and finally, the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore in O.A.No.2 of 2015 is to decide the character and nature of the Water Pandhal Charity concern as per the Will dated 01.10.1932 executed by Venkatachala Chettiyar. Further, the possession of the petitioner was confirmed by this Court and the respondents 5 to 15 have no title or ownership of the property in dispute. In the year 2007, the civil Court confirmed the petitioner's possession of the property and the respondents 5 to 15 have no right or any claim over the property. Thus, the petitioner's family have established their title and claim over the property. After the civil Court had given a possession and right over the property to the petitioner, the respondents 5 to 15 are creating disturbance, attempting to take away the petitioner's property by force and by illegal means.

(vii) In support of his contention, the learned counsel for the petitioner relied on the following decisions:-

- Radhika Sri Hari & another Versus The Commissioner of Police, Coimbatore City, Coimbatore and another reported in 2014-2-L.W 927.
- P.R.Muralidharan and others Versus Swami Dharmananda Theertha Padar and Others reported in (2006) 4 SCC 501.
- T.Ravikrishnan Versus The Commissioner, Officer of the Commissioner of Police, Sankagiri Main Raod, Salem and others reported in 2018 (1) MWN (Cr.) 447.

3. The learned counsel for the respondents 5 to 15 filed counter and typed set and made his submissions that the charitable endowment namely Sankarambadi Chathiram is for the benefit of devotees of Arulmighu Lakshmi Narayana Perumal Temple situated at Perumpulipakkam Village, Arakkonam, Vellore District. The said endowment contains Chathiram, well, pond and other cultivable lands of about 22 acres. The income from these lands are to be used for performing the charity of Chathiram, Annadhanam, conducting festivals in Utsava time. The devotees from various places used to come down to worship Arulmigu Lakshmi Narayana Perumal Temple of Perumbulipakkam Village and



used to come by walk through Sankarambadi Chathiram and Perumbulipakkam Village to visit Dearaja Perumal Temple at Kancheepuram during Bramhotsavam for several decades. The Chathiram was constructed in the name of Sankarambadi Chathiram and Annadhanam was performed during festival days. The said Chathiram was in existence from time immemorial and the lands of 27.39 cents in old survey No.40 and old survey Nos.342/A, 354 and 359 referred as Public Tope, is the standing testimony in support of the said Sankarambadi Chathiram. The land was settled as Minor Inam in favour of Sankarambadi Chathiram under T.D.No.981 as referred in the Settlement Register of Perumbulipakkam Village. These particulars are found in the proceedings of the Tahsildar, Arakkonam in Na.Ka.No.P4/4303/2008, dated 09.06.2008. During resettlement of survey held in the year 1961, the said lands is assigned as survey No.342/1 Acres 6.95 Cents and 3.54 Acres 15.35 Cents totally to Acres 22.30 Cents referred in T.D.No.981 in favour of Sankarambadi Chathiram. The said lands are not in the name of any private individual, which would prove that neither the petitioner nor his predecessors have any right, interest over Chathiram or properties.

4. The learned counsel for the respondents 5 to 15 further submitted that in 'A' Register of the said Village as well as in UDR scheme, the name of Sankarambadi Chathiram is recorded. The petitioner and his family members illegally mutated the patta in their names as if the subject matter of Chathiram lands belongs to them and obtained patta from the Deputy Tahsildar, Arakonam in P.T.A.No.242 of 9417, dated 24.01.2008. On coming to know about the same, the respondents 5 to 15 approached the Revenue Divisional Officer, Ranipet on 20.03.2008 submitted representation to cancel the patta in the name of the petitioner and his family members. On the representation of the respondents 5 to 15, the Revenue Divisional Officer, Ranipet forwarded the same to the Tahsildar, Arakonam for enquiry and cancellation of the said patta. Based on the representation, the Tahsildar, Arakonam conducted detailed enquiry and passed order in Na.Ka.No.P4/4303/2008, dated 09.06.2008 and cancelled the patta of the petitioner and his family and restored patta in the name of Sankarambadi Chathiram. The learned counsel further submitted that the suit in O.S.No.102 of 1986 is filed without including the Chathiram and interested villagers as party. According to the respondents 5 to 15, the decree obtained in O.S.No.102 of 1986 is non est in the eye of law. Aggrieved against the order of the Tahsildar, Arakkonam dated 09.06.2008, the petitioner and his family members preferred appeal before the Revenue Divisional Officer, Ranipet and the same was dismissed in Na.Ka.No.A4/2419/2008 on 09.08.2010, against which, the petitioner and his family members have not preferred any appeal. There are several proceedings between the respondents 5 to 15



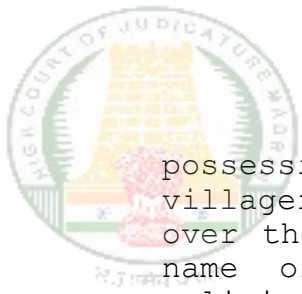
and the petitioner before this Court, before the Hindu Religious and Charitable Endowment Department, Revenue authorities. Whenever Brahmotsavam is held, problem is created for installation of Water Pandhal and the rival parties are approaching the Police for protection. There is claim and rival claim which resulted in filing of cases and complaints before various forms.

5. It is further submitted that the petitioner now questions the character of water panthal charity created by the late Venkatachala Chettiyar through his last Will dated 01.10.1932 and further claims the property not earmarked for the purpose of Arulmighu Lakshmi Narayana Perumal Temple situated in Perumpulipakkam Village, Arakkonam. The water pandhal charity has no connection with the temple and it has not been dedicated in favour of any deity. Therefore, the water pandhal charity through the last Will of Venkatasamy Chettiyar will not attract the provisions of the Hindu Religious and Charitable Endowment Act, 2006. Thus, the petitioner is changing his stand according to his convenience and now terming the Will not having any religious character. Further, the Tahsildar, Arakonam cancelling the patta in the name of the petitioner was confirmed by the Revenue Divisional Officer, Ranipet. The petitioner's family filed Writ Petition before this Court in W.P.No.13101 of 2014. This Court on 02.06.2014 had passed interim order granting stay of the order of appointment of a fit person with undertaking affidavit to be filed that the property in question will not be alienated or encumbered. This Court on 23.05.2019 in W.P.No.14855 of 2019, passed an interim order directing the 4th respondent Police to give Police protection to the petitioner to do Annadhanam at Sankarampadi Chathiram, Perumpulipakkam.

6. Before this Court two Writ Petitions in W.P.Nos.13104 of 2014 & 14855 of 2019 are pending. Now, O.A.No.2 of 2014 is pending before the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore with regard to the subject matter of property. Since the said proceedings are pending, the petitioner cannot claim the right over the property and cannot seek above prayer. Hence, he prayed for dismissal of this petition.

7. This Court considered the rival submissions and perused the materials available on record.

8. It is seen that the petitioner, trust and villagers have been filing petitions and complaints before the Revenue Authorities, the Hindu Religious and Charitable Endowment, Department, Police and before this Court during each year Brahmotsavam, though the civil Court had given possession of the land in favour of the petitioner and the delivery of the



possession is confirmed through Execution Petition. The villagers and the trust people are claiming right and possession over the property in dispute. Initially, the patta stood in the name of the petitioner and later, it was cancelled. The religious character of Sankarapadi Chathiram Charitable Trust in Perumpulivakkam Village, Arakonam Taluk is to be decided by the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore in O.A.No.2 of 2014. Now, the patta stands in the name of Sankarampadi Chathiram Charitable Trust and the possession is handed over to the petitioner by the civil Court which is disputed by the respondents 5 to 15.

9. In view of the rival claims, peace committees were formed, but no amicable solution reached. Hence, the performance of water pandhel during Brahmotsavam were cancelled. Each time the rival parties are approaching this Court and obtaining order for putting up water pandhal. There is intense fight between both rival groups, leading to law and order problem. The land of 22.99 acres in Perumpulivakkam Village had been left for the charitable purpose by Venkatachala Chettiyar through Will dated 01.10.1932, which was probated on 26.03.1935. According to the respondents 5 to 15 and the Villagers, the petitioner's group cannot claim right over the property of the land. As per revenue records, the land is clarified as minor inam lands for religious purpose. According to the respondents 5 to 15 and the villagers, the petitioner's group cannot claim right over the property of the land. The revenue records of those land is classified as minor inam land for religious purpose. The short period patta was recorded in the name of the petitioners group. Later, the same has been cancelled and the mutation of the medical records have been restored and set right.

10. The Hon'ble Apex Court in the case of "P.R.Muralidharan and others Versus Swami Dharmananda Theertha Padar and Others reported 2006 4 SCC 501" held in paragraph No.17 is as follows, which squarely applies to the facts of the case in hand:-

"17.A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is



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quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

18. In the case on hand, various disputed questions arose based on a deed of trust and the facts pleaded by the writ petitioner and controverted by the other side. The High Court should have normally directed the writ petitioner to have his rights adjudicated upon, in an appropriate suit in a civil court. The fact that a writ petitioner may be barred from approaching the civil court, in view of Order 9 Rule 9 of the Code of Civil Procedure, or some other provisions, is no ground for the High Court to take upon itself, under Article 226 of the Constitution, the duty to adjudicate on the civil rights of parties for the purpose of deciding whether a writ of mandamus could be issued to the police authorities for the protection of the alleged rights of the writ petitioner. A writ of mandamus directing the police authorities to give protection to the person of a writ petitioner can be issued, when the court is satisfied that there is a threat to his person and the authorities have failed to perform their duties and it is different from granting relief for the first time to a person either to allegedly protect his right to property or his right to an office, especially when the pleadings themselves disclose that disputed questions are involved. My learned Brother has rightly pointed out that the High Court was in error in proceeding to adjudicate on the rights and obligations arising out of the trust deed merely based on the affidavits and the deed itself. I fully agree with my learned Brother that the High Court should not have undertaken such an



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exercise on the basis that the right of the writ petitioner under Article 21 of the Constitution is sought to be affected by the actions of the contesting respondents and their supporters and that can be prevented by the issue of the writ of mandamus prayed for.

19.A writ for "police protection" so-called, has only a limited scope, as, when the court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order."

11. In view of the above, the right of the petitioner's group is yet to be confirmed. In W.A.No.2004 of 2011, dated 21.02.2013, it is observed that the appellant therein namely the petitioner's group to get the character and nature of water pandhal declared and conferred. Pursuant to the same, the petitioner's group had filed O.A.No.2 of 2014 before the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore to declare the character nature of water pandhal that whether it is a religious institution or religious endowment or specific endowment under Section 63(a)(c)(d) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and the same is pending. Hence, the character of the endowment is yet to be decided.

12. In view of the above discussions, this Court is not inclined to entertain the prayer sought by the petitioner and this Criminal Original Petition is, accordingly, dismissed.

13. The observations made herein is only for the purpose of disposal of the above petition. The authorities and forum to act independently uninfluenced by the observations made herein.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vv2



To

1. The Inspector General of Police,
North Zone, Alandur,
Chennai.
2. The Superintendent of Police,
Vellore District,
Vellore.
3. The Deputy Superintendent of Police,
Arakkonam,
Vellore District.
4. The Sub Inspector of Police,
Avalur Police Station,
Avalur, Arakkonam Taluk,
Vellore District.
5. The Public Prosecutor,
High Court, Madras.
6. The Subordinate Judge,
Vellore.
7. The District Munsif,
Sholingur.
8. The District Munsif,
Arakkonam.

+1cc to Mr.B.Sundarapandiyan, Advocate, S.R.No.36188

CRL.O.P.NO.16254 OF 2015

VSN-II (CO)
PBS/23/08/2021