



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2021

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.23145 to 23148 of 2018 & 2310 of 2019
and
W.M.P.Nos.27045 to 27048 of 2018

Kongu Vellalar Matric Higher Secondary School,
Represented by its Correspondent,
T.N. Chenniappan
Perundurai,
Erode District.

..Petitioner in all WPs.

vs

1. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai- 34.

2. The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Dr. Balasundaram Road,
Coimbatore.

3. Arulmighu Chellandiamman Thirukkoyil,
Represented by its Executive Officer,
Perundurai Nagar & Taluk,
Erode District.

..Respondents 1 to 3 in all WPs.

4. The Director of Matriculation School,
DPI Campus,
College Road,
Chennai-006.

..Respondent 4 in W.P.No2310 of 2019

(R4 impleaded vide order
dated 23.04.2019, made in
W.M.P.No.11640 of 2019 in
W.P.No.2310 of 2019 by KRCBJ).

Common Prayer in W.P.Nos.23145 to 23148 of 2018: Writ Petitions
are filed under Article 226 of the Constitution of India praying
to issue a Writ of Certiorari, calling for the records
pertaining to impugned proceedings of the third respondent dated
27.07.2018 and quash the same.

Prayer in W.P.No.2310 of 2019: Writ Petition is filed under
Article 226 of the Constitution of India praying to issue a Writ



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of Mandamus directing the respondent to consider and dispose the representation of the petitioner dated 31.12.2018 in a time bound manner as to be fixed by this Hon'ble Court.

For Petitioner : Mr.V.Raghavachari for
M/S V.S.Usharani

..in all WPs

For Respondents: Mr.N.R.R.Arun Natarajan
Government Advocate for R1 & R2
..in all WPs

Mr. K.Ashok Kumar for R3
..in all WPs.

Mr.V.Veluchamy
Government Advocate for R4
..in W.P.No.2310 of 2019

COMMON ORDER

These writ petitions are filed questioning the fair rent fixation notice issued by the Executive Officer of the third respondent/Temple in proceedings dated 27.07.2018.

2. The Petitioner is a Matriculation Higher Secondary School recognized by the appropriate Educational Authority and they started school in the premises belongs to the third respondent/Temple by way of a lease deed. The lease was granted to an extent of 4.02 acres in S.No.787 / 1,2,3,4 and 5 in Perundurai Village, in favour of the petitioner School in the year 1982. It is admitted by the petitioner School that beyond the lease property, they are in possession of an additional extent of land measuring 2.50 acres in SF.No.787/3, 787/4 and 787/5 of vacant land and the same is utilized as play ground for the School. However, the lease agreement was entered into in respect of the land measuring 4.02 acres only and the said lease was renewed subsequently and the petitioner states that they are paying the rent. Through communication dated 14.02.2004, the third respondent informed about the fixation of fair rent at the rate of Rs.50,312/- per month with effect from 01.07.1997. The petitioner School preferred a Revision in R.P.No. 5 of 2005 before the first respondent and the first respondent by order dated 14.11.2006, set aside the order and certain observations were made. However, the Government by its order dated 18.01.2010 remanded the matter back to the Rent Fixation Committee with a direction to re-fix the lease rent as per G.O.Ms.No.456, dated 09.11.2007, fixed the rent at Rs.54,079/- per month with effect from 01.11.2001 and an increase of 15% for every three years was also ordered. Thus,



the rental amount of Rs.95,168/- was fixed as rent on 09.07.2010. The petitioner School preferred an appeal again before the first respondent in AP No.42/2011. The first respondent once again remitted the matter back to the Rent Fixation Committee by order dated 21.09.2011.

3. Under these circumstances one Mr.K.S.Kuppusamy, a devotee of the third respondent/Temple has filed a writ petition in W.P.No. 642 of 2012 challenging the remand order passed by the first respondent dated 21.09.2011. This Court passed an order dated 29.04.2013, fixing fair rent for all the buildings at the rate of 0.20% of the value of the land in terms of G.O.No. 353, dated 04.06.1999 and G.O.No. 456, dated 09.11.2007. Accordingly, the rent was fixed as Rs.47,743/- as on 01.11.2001, Rs.54,905 as on 01.07.2004 and Rs.72,809 as on 01.07.2010 and the Petitioner was directed to pay the arrears of rent. It is an admitted fact that this Hon'ble Court fixed the fair rent for an extent of 4.02 acres as Rs.72,809 as on 01.07.2010. However, the petitioner School preferred an appeal before the Hon'ble Division Bench in W.A.No.1477 of 2013 and the writ appeal was allowed holding that for the 9 out of the 13 buildings that have been constructed by the School, the fair rent shall be 0.10% and not as 0.20% as held by the learned Single Judge in W.P.No.642 of 2012. In such terms, the petitioner School is paying the rent. However, the said devotee Mr.K.S.Kuppusamy, filed a Special Leave Petitions in S.L.P. No.13437 of 2016 and S.L.P.No. 13439 of 2016 and the same are pending before the Hon'ble Supreme Court of India. The third respondent Temple also filed a Special Leave Petition in S.L.P.No. 824 of 2017. All these special leave petitions are now pending before the Hon'ble Supreme Court of India, with reference to the fixation of fair rent and the methodologies adopted by the High Court determining the fair rent.

4. The petitioner themselves states that they made several representations to the authorities since from the year 1995 requesting them to fix the fair rent in respect of the encroached land to the extent of 2.50 acres, which is being in the possession by the School and used as a play ground. However, the Authorities have not fixed the rent, in view of the fact that there is no lease deed exist in respect of the land measuring 2.50 acres, which is admittedly encroached by the petitioner.

5. In this background, the impugned fair rent fixation notice is issued in respect of the land leased out and in respect of the other additional land measuring 2.50 acres.

6. The learned Counsel appearing on behalf of the petitioner mainly contended that the methodology adopted by the High Court



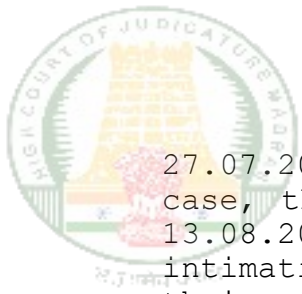
for fixing fair rent was questioned by the parties and the matter is pending before the Hon'ble Supreme Court. As far as the additional land measuring 2.50 acres is concerned, the third respondent issued fair rent fixation notice. Therefore, the petitioner states that the notice itself is perverse and not in consonance with the provisions of the Act.

7. It is contended that the fair rent is already finalized and settled by the Hon'ble Division Bench of this Court in W.A.No.1477 of 2013, taking into consideration the G.O.Ms.No.456, dated 09.11.2007 and G.O.Ms.No.353, dated 04.06.1999. Thus, the attempt now made by the respondents to unsettle the issue cannot be sustained. The petitioner claims that they are paying the rent as fixed earlier and further fixation of fair rent is impermissible. It is contended that the petitioner School is paying the rent as fixed by the learned Single Judge of this Court in W.P.No.642 of 2012 wherein 15% enhancement of rent is contemplated once in three years and as on today, the petitioner is paying monthly rent of Rs.85,796. Thus the impugned notices issued are without jurisdiction and liable to be set aside.

8. The learned Government Counsel appearing on behalf of the Department as well as the learned Counsel appearing for the third respondent/Temple objected the contentions raised on behalf of the petitioner in entirety.

9. Relying on Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the learned Counsel for the third respondent reiterated that fixation of lease rent is to be determined by the Fair Rent Committee duly constituted under the provisions of the Act. Regarding the fixation made by the High Court in the Writ Petition, the matter is subjudiced before the Hon'ble Supreme Court. However, the Fair Rent Fixation Committee has taken into consideration, the efflux of time to fix the fair rent and the same cannot be said to be irregular. The fair rent is to be fixed periodically taking note of the market rate prevailing during the relevant point of time. It is not as if the petitioner can pay the rent which was fixed at the earliest point of time by merely adding 15% once in three years, which may not mitigate the circumstances as the property value is increased several times and, the Authorities are duty bound to protect the interest of the Temple. Thus, the fair rent is always the matter of subject to be reviewed based on the market rate prevailing during the relevant point of time.

10. The learned Counsel for the third respondent/Temple regarding the contentions raised by the petitioner that no notice was issued prior to the impugned order, he submits that the notice was issued by the Temple to the petitioner School on



27.07.2018, along with the calculation sheet. In the present case, the petitioner has responded to the notice by reply dated 13.08.2018. When the petitioner has responded to the notice intimating fair rent in proceedings dated 27.07.2018 and raised their objections, it is for the Authorities to take a decision on that and there is no procedure for issuing any further orders as the notice for all purposes is to be construed as a demand notice. If at all the petitioner is aggrieved, they have got a right of appeal under the provisions of 34-A(3) of the Act, against the fixation of lease rent.

11. Sub-Section 3 to Section 34A contemplates that "any person aggrieved by an order passed under sub-section (2) within a period of 30 days from the date of receipt of such order, appeal to the Commissioner, in such form and in such manner, as may be prescribed." Therefore, the provision contemplates fixation of lease rent and communicate the demand notice and in the event of filing any objections, if it is considered, then a revised notice may be issued. The objections are filed and thereafter final order is passed confirming or modifying the fair rent fixed. If the lessee is aggrieved from and out of the said final order, then the right of appeal lies under Section 34-A(3) of the Act. This being the procedures contemplated under the provisions of the Act, the present Writ Petitions are filed challenging the demand notice and therefore, these Writ Petitions are not maintainable.

12. The learned Counsel for the third respondent made a submission that the Government orders in G.O.Ms.No.353, dated 04.06.1999 and G.O.Ms.No.456, dated 09.11.2007 are issued as guidelines in pursuance to the provisions of the Act and Rules and therefore, the fixation now proposed in the impugned demand notice is in accordance with the provisions of the Act and Rules and also in consonance with the Government Orders issued. Thus, there is no infirmity as such in respect of the demand notice issued and it is left open to the petitioner to file their objections, if they have chosen to do so and in the event of filing any such objections, the Authority Competent is bound to consider and take a decision and pass final orders. It is contended that the demand notice for all purposes is an intimation provided regarding the fair rent fixed with reference to the property belongs to the Temple. Thus, the present Writ Petitions filed questioning the demand notice on merits cannot be sustained at all.

13. Considering the arguments as advanced by their respective learned counsels appearing on behalf of the parties to the lis, the issues to be considered by this court are that:

1. Whether the Writ needs to be entertained against the demand notice regarding the fair rent fixed under the provisions



of the HR & CE Act.

2. Whether a Writ on merits regarding the fixation of the rent can be entertained or not?
3. Whether, the pendency of the SLP is a bar for the Fair Rent Fixation Committee to fix the fair rent by adopting the procedures as contemplated under the provisions of the Act and Rules.

14. It is an admitted fact that the lease agreement was entered into between the petitioner School and the Temple Authorities only to an extent of land measuring 4.02 acres. It is further admitted that an additional land measuring 2.50 acres was encroached upon by the petitioner and now they are in possession of the same.

15. The findings made by the Hon'ble Division Bench of this Court in W.A.No.1477 of 2013 dated 29.02.2016, reveals that 2.50 acres of land belongs to the temple was encroached by the petitioner. It is recorded by the Hon'ble Division Bench that "it is fairly conceded by the learned Counsel for the appellant (petitioner School) that 2.50 acres is encroached portion which is used as play ground for which no rent is paid." Therefore, the petitioner themselves admitted before the Hon'ble Division Bench of this Court that 2.50 acres of land belongs to the temple was encroached and they are in possession of the land and they are not paying the rent. Thus, the lease deed executed pertains to the land measuring 4.02 acres and for that alone the petitioner has filed W.P.No.2310 of 2019.

16. Admittedly, the property in occupation of the petitioner/School is a valuable property, situated in Perundurai Town in Erode District. The period of lease has already been expired and not renewed. In respect of the 2.50 acres, admittedly the petitioner is an encroacher. The issues regarding fixation of fair rent and encroached portion of the property are being prolonged and protracted by one way or other at the instance of the petitioner. The petitioner is not paying the fair rent fixed, by citing the pendency of the Special Leave Petition before the Apex Court of India. The third respondent/temple is the landlord and the deity is in the position of a minor. Thus, it is duty mandatory on the part of the Trustees and Authorities Competent to protect the minor Idol in a temple.

17. The issues are to be considered in the perspective of a prudent person. No prudent person will allow a tenant to prolong and protract the issues without even collecting the fair rent in accordance with law. The Trustees and Authorities of the temple must borne in mind that Idol being in position of a minor must be protected and the property belong to the temple in all



respects are to be dealt prudently, vigilantly and in the manner known to law. If any such Trustee or Administrator leaves the Idol in lurch, this Court is duty bound to step in and initiate appropriate actions to restore the position of the temple and its properties. The properties in illegal occupation are to be retrieved and must be put on use as per the wishes of the donor and for the benefit of the temple.

18. Great souls of this great nation who have faith in religion and religious institutions donated their valuable and hard earned money/property for the interest of the temple and to serve the temple. Those properties are donated with specific purposes and object and to do services to the temple and devotees worshiping the temple. If the wishes of those great souls are not honoured, the persons accountable and responsible are not only committing sin, but they are violating the provisions of law. No doubt, the petitioner/School is catering the needs of the students studying in the School from the nearby localities. However, the School being a Matriculation School is collecting all kinds of fees from the students. The Correspondent is a private person and not the Government. The petitioner/School cannot be construed as a charitable institution within the definition. Thus, they are not entitled for any concession in the matter of fair rent in respect of the temple properties. Thus, the petitioner/School is bound to pay the fair rent as fixed by the Fair Rent Fixation Committee under the provisions of the HR & CE Act.

19. Regarding the fixation of rent made by the High Court in W.P.No.642 of 2012 is concerned, the said fixation was made based on the consent between the parties. Such fixations made by consent in the year 2012 cannot be construed as final fixation of fair rent for all future purposes. During the relevant point of time, the parties have consented and agreed for a particular rent and such rent is to be reviewed strictly in accordance with the provisions of Section 34-A of the HR & CE Act, 1959. No agreement can be validated if it runs counter to the provisions of the statute. In other words, any consent agreement if it runs counter to the provisions of the Act, then all such agreements are null and void. Even "Sub Section (1) to Section 34 of the HR & CE Act, 1959 categorically enumerates that "any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution". Section 34-A deals with fixation of lease rent. Accordingly, the Committee constituted must ascertain the prevailing market rental value belongs to the temple and accordingly, re-fix the rent in the like manner once in three years. Thus, the rent is to be re-fixed once in three



years by the Statutory Committee constituted for that purpose. The legislative intention in respect of Section 34 and Section 34-A are that the temple properties are protected and the income should be derived in a proper manner for the benefit of the temple. The language adopted in Section 34-A is "prevailing market rental value". Thus, the prevailing market rental value is to be ascertained through various factors and accordingly the fair rent is to be fixed.

20. High Court is not competent to fix the fair rent in respect of the temple properties and the fair rent is to be fixed by the Statutory Committee constituted under Section 34-A of the HR & CE Act, 1959. The Committee has to ascertain the market rental value of the particular property in that particular locality, where the temple properties are situated and accordingly, fix the fair rent to be paid by the lessee or tenant. Thus the Fair Rent Fixation Committee constituted under Section 34-A of the HR & CE Act, alone is to be construed as a valid fair rent fixation, for all purposes.

21. Thus, the fixation made by consent in W.P.No.642 of 2012 was for the period of three years and thereafter, the Competent Committee must ascertain the prevailing market rental value of the property and accordingly, fix the fair rent to be paid by the petitioner. It is not as if the parties by consent can fix the fair rent in a particular manner and in such circumstances, all such fixations are to be declared as null and void and in violation of Section 34-A of the HR & CE Act. In respect of the encroached portion of the land to an extent of 2.50 acres is concerned, the third respondent/temple is empowered to initiate action under Section 78 of the HR & CE Act for the eviction of the encroachers. If at all, the petitioner takes a policy decision that the said portion may also to be leased out then prevailing market rental value is to be fixed as fair rent and accordingly, appropriate actions are to be initiated in either circumstances decision is to be taken in the interest of temple.

22. Pertinently the phraseology "prevailing market rental value" contemplated under sub-section has been explained in Explanation to sub section (1). The said explanation stipulates that "for the purpose of this sub section "prevailing market rental value" means the amount of rent paid for similar types of properties situate in the locality, where the immovable property of the religious institution is situated.

23. Therefore, the Act defines the phrase "prevailing market rental value". In this regard, the Rent Fixation Committee is bound to make a comparative study with reference to the amount of rent paid for similar types of properties situate in the localities, where the immovable properties of the religious



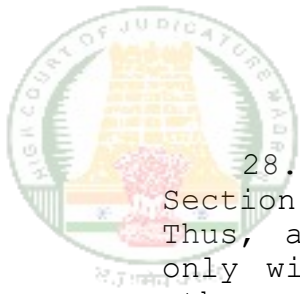
institution is situated. Therefore, the Act contemplates complete protection of the temple properties and fixation of lease rent by the Committee. The Department is not fixing the rent in the manner prescribed under the Act, is the concern of this Court. The Executives are bound to implement the provisions of the Act scrupulously in its letter and spirit. It is not as if the Executives can deal with the temple in a lackadaisical or casual manner.

24. The Authorities who all are the guardian and the controller of the administration of the temple are expected to act prudently and diligently in order to protect the property belongs to the temple and in order to honor the wishes of the donors, who have donated their valuable properties to do services to the temple and the devotees.

25. Sub Section 2 to Section 34-A provides an appeal by an aggrieved person if the Executive Officer or the Trustee or the Chairman of the Board to Trustees, as the case may be, of the religious institution concerned, passed an order fixing the lease rent and intimate the same to lessee specifying a time within which such lease rent shall be paid. Under Sub Section 3 to Section 34A of the Act, any aggrieved person may prefer an appeal to the Commissioner.

26. This being the scheme of the Act, the very contention of the petitioner that they will pay 15% additional rent once in every three years based on the order passed in the writ petition in the year 2012 is undoubtedly in violation of the provisions of Section 34-A of the Act. When the Act contemplates particular procedure to be followed for fixation of lease rent and the Committee is also constituted that as the fixation of the rent is to be re-fixed once in three years then the provisions will prevail and the Committee has to re-fix the rent once in three years and such re-fixation is to be communicated to the lessee and on receipt of any such communication, the lessee may get the right of appeal under sub-section 3 to Section 34A of the Act and pay the lease rent accordingly.

27. Under Section 6(17) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, 'Religious Endowment' or 'Endowment' means "all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gift to the archaka, service holder or other employee of a religious institution."



28. However, the Rule must be read in consonance with Section 34A(1) of the Explanations provided for Sub Section (1). Thus, any Government Orders in this regard are to be followed only with reference to Section 34A of the Act and not in any other manner. If any Government Orders are issued running counter to the provisions of Section 34A of the Act, then such Government Orders contravening the provisions of the Act is to be declared as null and void.

29. The learned counsel for the petitioner relied on G.O.Ms.No.353 dated 04.06.1999 and G.O.Ms.No.456 dated 09.11.2007. As far as the said Government Orders are concerned, G.O.Ms.No.353 pertains to the Temple lands, shops and residential houses. However, the guidelines issued in the said Government Order is to be read along with the provisions of the Act and Rules. As far as the G.O.Ms.No.456 dated 09.11.2007 is concerned, the Government Order itself says that the rent is to be re-fixed once in three years and certain prescriptions are made and such prescriptions are to be construed as valid only for the particular period and beyond the period of three years, the Rent Fixation Committee is empowered to re-fix the rent by following the procedures under Section 34-A of the Act. Thus, the G.O. issued by the Government cannot be operated. The Government Order fixing any rent or guidelines in respect of the Temple property cannot be validated beyond the period of three years. To that extent, the Government Order issued in the year 1999 and 2007 cannot be relied upon for the purpose of fixation of rent to be made presently in the year 2021 as the prevailing market rental value will vary from time to time and when the Act contemplates a particular procedure, no Government Order shall run counter to the provisions of the Act.

30. With reference to the grounds raised by the petitioner that the impugned notice is not a show-cause notice and it is an order demanding rent, no doubt the proceedings impugned would reveal that it is a fair rent fixation notice / demand notice. In respect of the property tax, fixation of rent, water charges by the Board etc., the demand notice alone is to be issued and there is no provision to issue show-cause notice before fixing a rent. A distinction is to be drawn between "show cause notice" and "demand notice". When there are allegations against any person then show cause notice may be seeking explanation on such allegations. However, the demand notices are issued under the provisions of the Act. When the statute contemplates a specific procedure to be followed for fixation of rent, then the Competent Authority is bound to fix the rent in the manner prescribed and communicate the rent fixation by way of demand notice. Therefore, the "demand notice" can never be compared with the "show cause notice". The demand notices are issued in the cases of demand of water charges, electricity charges,



property tax etc. Such demand notices further provides an opportunity to the noticee to submit their objections. Thereafter, a final order is passed and a right of appeal is also contemplated. Therefore, the demand notice is the first notice, which is issued by fixing a rent as contemplated under the Act. It is to be borne in mind that it is not necessary that the tenant should be given any opportunity for fixation of rent in accord with law. It is the prerogative of the landlord to fix the rent by following the procedures as contemplated under the Act. Once such a rent is fixed in accordance with the Act and a demand notice is issued then the tenant is entitled to submit their objections and thus the initial fixation is to be done by the landlord, but not at the instance of the tenant. This being the concept of the demand notice, the very contention of the petitioner that the fixation of rent in the demand notice is irregular, can at no stretch of imagination be accepted.

31. As far as the writ petitions are concerned, admittedly, the demand notices are questioned. As far as the impugned demand notices are concerned, the petitioners have submitted their objections on 13.08.2018. The said objections are yet to be considered by the Authorities and in view of the interim stay granted in these writ petitions, the Authorities have not considered so far. However, the Authorities have to consider the objections filed by the petitioner and pass final order with reference to the fixation of rent to be paid by the petitioner.

32. Thereafter, if the petitioner is aggrieved then they are at liberty to approach the Appellate Commissioner under Sub Section 3 to Section 34A of the Act. This being the procedures contemplated, the writ petitioner has approached this Court at the stage of demand notice. Accordingly, the writ petitions are not entertainable at this point of time.

33. Thus on the facts and circumstances established, this Court is inclined to pass the following orders:

i) The relief as such sought for in these writ petitions stand rejected.

ii) The Competent Authority under the provisions of the HR & CE Act is directed to consider the objections filed by the petitioner on 13.08.2018 and pass final orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

iii) Regarding the encroached portion of land by the petitioner measuring 2.50 acres, the respondents are at liberty to initiate action under Section 78 of the HR & CE Act by following the procedures as contemplated under the Act.

iv) Regarding the renewal of lease, the Competent Authorities are bound to ensure that the fair rent fixed under Section 34-A of the HR & CE Act is paid by the petitioner/School



up to date and thereafter take a decision keeping in mind the interest of the temple and its properties.

v) The first respondent/Commissioner, HR & CE Department is directed to issue circular to all the Sub-ordinate Authorities to fix fair rent in respect of all the properties belong to the religious institutions across the State of Tamil Nadu strictly in accordance with the procedures as contemplated under Section 34-A of the HR & CE Act.

vi) The first respondent/Commissioner is directed to ensure that fair rent fixation / re-fixation / enhancement of rent, as the case may be, are being done once in three years in respect of all the properties of the religious institutions across the State of Tamil Nadu by following the procedures as contemplated under Section 34-A of the Act.

34. With the above directions, all the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Pns/nti

To

1. The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam, Chennai- 34.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Dr. Balasundaram Road,Coimbatore.
3. Arulmighu Chellandiamman Thirukkoyil,
Represented by its Executive Officer,
Perundurai Nagar & Taluk, Erode District.
4. The Director of Matriculation School,
DPI Campus, College Road, Chennai-006.

+1cc to M/s.Usharani, Advocate, S.R.No.45945/21

W.P.Nos.23145 to 23148 of 2018 & 2310 of 2019
and W.M.P.Nos.27045 to 27048 of 2018

(CO)

RGA(26/10/2021)