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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| Reserved on   | 28.09.2021 |
| Pronounced on | 29.09.2021 |

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No.16062 of 2021  
and WMP Nos.19062 and 17541 of 2021

- 1.K.Paramasivam
- 2.Sathish Kumar
- 3.T.Prasanna
- 4.Paramasivam
- 5.RabeekJaman
- 6.Ramadass Pandian
- 7.Murugesan
- 8.Mohamed Ismail
- 9.Haja Maideen

.. Petitioners

Vs

- 1.Union of India,  
Represented by the Chief Secretary  
Government of Puducherry  
Goubert Avenue, Puducherry 605 001.
- 2.The Secretary to Government  
Local Administration Secretariat  
Government of Puducherry  
No.16 Suffren Street,  
Puducherry 605 001.
- 3.The Director,  
Head of Department  
Local Administration Department  
No.16 Suffren Street,  
Puducherry 605 001.
- 4.The Chairman  
Office of the Committee for Delimitation of Municipal  
and Panchayat Wards  
No.16 Suffren Street, Puducherry.



5. The Commissioner,  
Thirunallar Commune Panchayat,  
Thirunallar,  
Karaikal

.. Respondents

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Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned notification of the 2<sup>nd</sup> respondent dated 07.03.2019 bearing Ref. No.G.O.Ms.No.50/LAS/2019, Puducherry and quash the same and consequently, direct the respondents 1 - 4 to consider the representation and the recommendation of the 5<sup>th</sup> respondent dated 01/07/2021 and to retain Pudhumani Street, Rice Mill Street, Madarasha Street, Old Ambagarathur Pet and Colony Street, Thalaiyari Street, Thalayari Lane and Kandhankudy Salai of Ambagarathur Village in the Ambagarathur Village Panchayat for the purposes of civil elections.

For Petitioner : Mr.T.Saikrishnan for  
Mr.L.Poovendra Perumal

For Respondents : Mrs.N.Mala  
Government Pleader for Puducherry

#### ORDER

The present writ petition questions the impugned delimitation notification issued by the second respondent dated 07.03.2019 and for a consequential direction to consider the representation made by the petitioners and also the recommendation made by the 5<sup>th</sup> respondent and retain the concerned streets and lanes in Ambagarathur Village Panchayat.

2. The local body elections were held in the Union Territory of Puducherry in the year 2006. The period came to an end on 13.07.2011. The State Election Commission issued a notification on 27.09.2012 for the purpose of holding the local body election in January 2013 on the basis of the delimitation that was carried out in the year 1995, which in turn was based on the population shown under the 1991 census.

3. A writ petition came to be filed before this Court questioning the election notification on the ground that there has been a substantial increase in population after the 1991 census and hence a direction was sought for before this Court to carry out delimitation of the Wards afresh and thereafter conduct elections. The writ petition in W.P.No.30477 of 2012 was disposed of by this Court by an order dated 13.12.2012 by issuing directions for delimitation of the Wards.

4. The said order was also confirmed by the Hon'ble Supreme Court and the Hon'ble Supreme Court directed the



process of delimitation to be completed within a period of two months from 14.12.2012.

5. Pursuant to the above orders, a Delimitation Committee was constituted on 22.05.2013 and after meeting the Commissioners of Commune Panchayats and after eliciting their views, a draft notification of delimitation of Village Panchayat Wards and Commune Panchayat Wards was published on 28.01.2016. The draft notification was also published on 01.02.2016 in the Official Gazette.

6. On 07.03.2019, delimitation of Municipal Wards and Panchayat Wards was notified in G.O.Ms.No.49 and G.O.Ms.No.50 and it was also published in the official gazette.

7. In the meantime, a contempt petition was moved before the Hon'ble Supreme Court on the ground that the delimitation process was not completed on time and the elections were not conducted. The Hon'ble Supreme Court, by an order dated 05.04.2021, directed that the election to the local bodies in the Union Territory of Puducherry should be conducted within a period of four months after completion of delimitation process. The delimitation process that was referred by the Hon'ble Supreme Court pertained to some errors, which had occurred in respect of certain Wards, when the notification was published on 07.03.2019 and for the purpose of correcting these errors, necessary amendment notifications were issued calling for objections. This was directed to be completed within a period of two months.

8. Pursuant to the above order passed by the Hon'ble Supreme Court, the final amendment notifications were issued through Government Orders dated 04.06.2021 and the same was also published in the Official Gazette.

9. A representation was given by the residents of Ambagarathur, Tirunallar Commune Panchayat to the effect that some of the streets and lanes belonging to the Ambagarathur village panchayat has been included in the Nallambal Village Panchayat and they requested for retaining the same in Ambagarathur Village Panchayat itself. A representation was also made to the 5<sup>th</sup> respondent and the 5<sup>th</sup> respondent also submitted a report dated 01.07.2021 to the third respondent to the effect that the objections made by the residents can be considered and their request for retaining those streets and lanes in Ambagarathur Village Panchayat itself can be considered to safeguard their interest. The grievance of the petitioners is that neither the representation nor the report submitted by the 5<sup>th</sup> respondent was considered and hence, the present writ petition has been filed challenging the notification dated 07.03.2019 issued by the second respondent and for consequential directions.



10. The learned counsel for the petitioners submitted that delimitation notification was issued without complying with the provisions of Section 12 of the Puducherry Village and Commune Panchayats Act, 1973 (hereinafter referred to as 'the Act'). For proper appreciation, Section 12 of the Act is extracted hereunder:

"12. Delimitation of constituencies, etc. - (1) For the purposes of election of members of a panchayat, the Government, after previous publication and bearing objections, shall by notification, divide the panchayat village and commune panchayat, as the case may be, into territorial constituencies.

(2) The Election Commission shall, after previous publication in the prescribed manner, determine the constituencies in which seats if any, are to be reserved for the Scheduled Castes and/or for the women.

(3) All the electors of a constituency, irrespective of the community or sex, shall be entitled to vote at any election to any seat in that constituency whether reserved or not."

11. The learned counsel for the petitioner submitted that the draft notification that was issued on 28.01.2016 merely provided for the details of the population in the concerned panchayat village and there was no indication as to what areas are going to be merged after delimitation. The learned counsel submitted that there was no proposal for effecting any change in the existing constituencies as per the above notification and no objections were called for from the public as required under Section 12 of the Act and there was no wide publication and therefore, the final notification published on 07.03.2019 is illegal and requires the interference of this Court insofar as merging some of the streets and lanes from Ambagarathur Village Panchayat to Nallambal Village Panchayat. The learned counsel submitted that the petitioners/residents of the locality came to know about the notification only in the year 2021, when the amendment notification was published and thereafter a representation was given to the respondents and a report was also submitted by the 5<sup>th</sup> respondent and in spite of the same, some of the streets and lanes continued to be merged with Nallambal Village Panchayat. The learned counsel also explained this Court the hardship that will be faced if the streets and lanes are transferred to Nallambal Panchayat.

12. The learned counsel for the petitioners submitted that the petitioners are not intending to stop the elections, which has already been notified and the elections can go on by directing the respondents to retain the concerned streets and lanes in Ambagarathur village panchayat. The learned counsel also referred to the judgment of the Hon'ble Supreme Court in



State of Goa and another v. Fouziya Imtiaz Shaikh and Another reported in 2021 SCC Online SC 211 and specifically brought to the notice of this Court Paragraph No.65 of the judgment, which summarises the powers vested in this Court under Article 226 of the Constitution of India to interfere when there is an apparent illegality in the process of delimitation.

13. The respondents have filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

"8.4.(7) (8) (9) & (10) The allegation of the Petitioner that the Notification, dated 28.01.2016 relating to the proposal for Delimitation of Village Panchayat Wards and Commune Panchayat Wards does not state clearly as to the details of Wards of each Panchayat Village and it does not contain any proposal at all for effecting any change in the existing constituencies and that there was no wide publication of the aforesaid Notification in any other manner except in the Gazette, so as to reach the common public and the Petitioners were not aware of the issue of such Notification, is also baseless and contrary to the fact because as per definition given in the Puducherry Village and Commune Panchayats Act, 1973 the expression "notification" has been defined as notification published in the Official Gazette (vide clause 17 under section 2 of the said Act). Further, the details of the boundaries of Commune Panchayat Wards and Village Panchayat Wards and list of areas/streets which are included in the respective Ward concerned in all the Commune Panchayats and Village Panchayats are voluminous running to hundreds of pages. As regards, Thirunallar Commune Panchayat alone, the total number of pages in the Puducherry State Gazette is 72. In case, the aforesaid details of Village Panchayat Wards and Commune Panchayat Wards (i.e. Ward Wise) in respect of all the 108 Village Panchayats and 10 Commune Panchayats are to be appended to the Notification published in the State Gazette as Annexures, it would be bulky and it cannot be easily handled. Moreover, it is only a draft Notification calling for objections or suggestions to the proposed Delimitation and not a final one. It is also not possible to publish such voluminous details of Wards in Newspapers, as well. Therefore, it has been specifically mentioned at para 5 in the Notification issued in G.O.Ms.No.60, dated 28.01.2016 as published in the Puducherry State



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Gazettee (vide Extraordinary Gazette (Part-I) bearing No.8, dated 01.02.2016) that Delimitation proposal shall be available with the respective Commune Panchayat. The aforesaid Notification was hosted in the Website of Local Administration Department and a press release in tamil was also issued. As the election to Commune Panchayats is a party based election, a meeting of leaders/representatives of political parties was held on 08.08.2016 and 24.05.2018. A meeting of MLAs was also held on 22.02.2019 to elicit their views on Delimitation. It is therefore, very clear that Delimitation of Wards of Local Bodies was not carried out in camera and in a secret manner. Hence, public would have very well known about the Delimitation. Further, no objection or suggestion was received from the public during the period of one month time from the date of publication of the aforesaid Notification (i.e. from 01.02.2016). The final Notification in question was issued in G.O.Ms.No.50, dated 07.03.2019 of the Local Administration Secretariat and published in the Extraordinary Gazette (Part-I), bearing No.38, dated 07.03.2019. That is to say the final Notification was issued and published in the State Gazette after a period of three years from the date of issue of draft Notification. The said period of three years is certainly such a very exceptional long span of time. It is to be pointed out here that the Petitioners have not filed any objection or suggestion during the aforesaid period of three years. It is, therefore, very clear that there has been an extraordinary inordinate delay in filing this Writ Petition by the Petitioners. In this connection, it is humbly submitted that the Hon'ble Supreme Court in its order, dated 05.04.2021 has given an ultimatum for Delimitation and conduct of election. As per the said order the Delimitation should be completed within a period of 2 months (i.e. on or before 04.06.2021) and election should be conducted within a period of 4 months after the completion of Delimitation (i.e. on or before 04.10.2021). Following the final Notification of Commune Panchayat Wards and Village Panchayat Wards, Electoral Rolls have been prepared and published. List of polling stations has also been published by the State Election Commission. On 22.09.2021, the State Election Commission announced the election



schedule for conduct of election to the local bodies in the Union territory of Puducherry as detailed below:-

#### Schedule of Elections

|                                                    | I Phase    | II Phase   | III Phase  |
|----------------------------------------------------|------------|------------|------------|
| Date of Notification/Start of Filing of Nomination | 30.09.2021 | 04.10.2021 | 07.10.2021 |
| Last date for filing nomination                    | 07.10.2021 | 11.10.2021 | 15.10.2021 |
| Scrutiny of nomination                             | 08.10.2021 | 12.10.2021 | 16.10.2021 |
| Last date for withdrawal of candidature            | 11.10.2021 | 15.10.2021 | 18.10.2021 |
| Poll day                                           | 21.10.2021 | 25.10.2021 | 28.10.2021 |

|                    | I Phase                 | II Phase   | III Phase    |
|--------------------|-------------------------|------------|--------------|
| Municipality       | Karaikal                | Puducherry | -            |
|                    | Mahe                    |            | -            |
|                    | Yanam                   | Oulgaret   | -            |
|                    |                         | -          |              |
| Commune Panchayats | Kottucherry             | -          | Ariyankuppam |
|                    | Nedungadu               | -          | Bahour       |
|                    | Neravy                  | -          | Mannadipet   |
|                    | Thirumalairayanpattinam | -          | Nettapakkam  |
|                    | Thirunallar             | -          | Villianur    |

In such a circumstances, it may not be practically possible to consider the prayer of the Petitioners to retain the areas/streets which have been included in Ward No.VI and VII in the Nallambal Panchayat Village as per the recent Delimitation notified as above, in the Ambagarathur Panchayat Village, at this distance of time. In case the prayer of the petitioner is to be considered, the following actions have to be taken which will lead to unavoidable delay and consequently, it may not be possible to adhere to the ultimatum given by the Hon'ble Supreme court which in turn will ultimately lead to contempt proceedings:

- (i) Necessary amendment has to be made in the Notification of Delimitation of wards.



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(ii) Electoral Rolls have to be revised.

(iii) Location for setting up of polling station have to be identified and notification thereof has to be issued.

(iv) Additional polling personnel and security personnel have to be deployed.

#### PARA-WISE REPLY TO THE GROUNDS

9. (a) & (b) The details of the boundaries of Commune Panchayat Wards and Village Panchayat Wards and list of areas/streets which are included in the respective Ward concerned in all the Commune Panchayats and Village Panchayats are voluminous running to hundreds of pages. As regards, Thirunallar Commune Panchayat alone, the total number of pages in the Puducherry State Gazette is 72. Incase, the aforesaid details of Village Panchayat Wards and commune Panchayat Wards (i.e. Ward wise) in respect of all the 108 Village Panchayats and 10 Commune Panchayats are to be appended to the Notification published in the State Gazette as Annexures, it would be bulky and it cannot be easily handled. Moreover, it is only a draft Notification calling for objections and suggestions to the proposed Delimitation and not a final one. It is also not possible to publish such voluminous details of wards in Newspapers as well. Therefore, it has been specifically mentioned at para 5 in the Notification issued in G.O.Ms.No.60, dated 28.01.2016 as published in the Puducherry State Gazette (vide Extraordinary Gazette (Part-I) bearing No.8, dated 01.02.2016) that Delimitation proposal shall be available with the respective Commune Panchayat. The aforesaid Notification was hosted in the Website of Local Administration Department and a press release in tamil was also issued. As the election to Commune Panchayats is a party based election, a meeting of leaders/representatives of political parties was held on 08.08.2016 and 24.08.2018. A meeting of MLAs was also held on 22.02.2019 to elicit their views on Delimitation. It is therefore, very clear that Delimitation of Wards of Local Bodies was not carried out in camera and in a secret manner. Hence, public would have very well



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known about the Delimitation.

9. (c)& (d) The petitioner has cited the population of certain other village Panchayats such as Manavelly (North), Manavelly (South), Uruvaiyar, and Sedarapet where the population exceeds 6,500 as examples. These examples are exceptional and they cannot be applied for Ambagarathur Panchayat Village.

9. (e) The following is the population of Scheduled Caste as per 2011 census in Commune Panchayat wards in respect of Thirunallar Commune Panchayat as notified in G.O.Ms.No.28 dated 04.08.2021 and published in the Puducherry state gazette (Extraordinary gazette part-I) bearing NO.147 dated 04.08.2021.

| POPULATION OF SCHEDULED CASTES IN EACH WARD OF COMMUNE PANCHAYAT |                     |                  |                       |                     |
|------------------------------------------------------------------|---------------------|------------------|-----------------------|---------------------|
| (As per 2011 Census)                                             |                     |                  |                       |                     |
| Name of the commune Panchayat : 10. Thirunallar                  |                     |                  |                       |                     |
| Commune Panchayat Ward                                           |                     |                  |                       |                     |
| Ward No.                                                         | Name                | Total population | Total S.C. Population | % of S.C Population |
| 1)                                                               | (2)                 | (3)              | (4)                   | (5)                 |
| 1                                                                | Ambagarathur        | 5,053            | 501                   | 9.91                |
| 2                                                                | Nallambal           | 5,041            | 1,289                 | 25.57               |
| 3                                                                | Sethur              | 4,366            | 599                   | 13.72               |
| 4                                                                | Sellur              | 3,990            | 1,249                 | 31.30               |
| 5                                                                | Karukkankudy        | 4,133            | 1,686                 | 40.79               |
| 6                                                                | Surakudy            | 4,658            | 1,189                 | 25.53               |
| 7                                                                | Thirunallar (North) | 4,177            | 647                   | 15.49               |
| 8                                                                | Thirunallar (South) | 3,447            | 669                   | 19.41               |
| 9                                                                | Pettai              | 4,005            | 661                   | 16.50               |
|                                                                  | Total               | 38,875           | 8490                  | 21.84               |

It is very clear from the above table that Karukkankudy Panchayat Village (i.e. Commune Panchayat ward) has highest population of Scheduled Caste and next to karukkankudy Panchayat Village (i.e. Commune Panchayat ward) Sellur and Nallambal Panchayat Villages have the higher Population. As per sub-rule 1 of



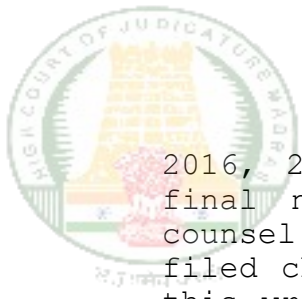
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rule 5 of the Puducherry Village and Commune Panchayats (Allotment and Rotation of Reserved seats and Offices) Rules, 1996. Reservation of seats, Scheduled Caste shall be made by the Election Commission as far as practicable in the ward, where population of the Scheduled Caste is comparatively large to the total population of the ward. The petitioner has stated that the reservation guaranteed under the Article 243T of the Constitution has been diluted by the order of the Delimitation. It may be therefore seen from the above table that reservation of seats for Scheduled Caste has not be diluted and article 243T has no relevance in this matter because it pertains to reservation of seats for Scheduled Caste in Urban Local Bodies (i.e. Municipality).

9. (f) The allegation of the petitioner that the respondents have not taken into consideration the practical difficulties that the affected villagers would be subjected due to the delimitation exercise, is baseless and not sustainable.

9. (g) & (h) As already submitted, the Nallambal Panchayat Village and Ambagarathur Panchayat village are not separated by the areas of the neighbouring state of Tamil Nadu and Commune Panchayat wards (i.e. Panchayat Villages) have been formed on the basis of the size of population as recommended by the Delimitation Committee as approved by the Government. The other various grounds put forth by the petitioner have no relevance at all for consideration."

14. The learned Government Pleader appearing on behalf of the respondents, apart from reiterating the stand taken in the counter affidavit, submitted that the petitioners are making a desperate attempt to stall the elections, which has already been notified on 22.09.2021. The learned counsel further submitted that the draft notification that was issued on 28.01.2016 specifically provided that the delimitation proposal will be available with the respective Commune Panchayat for inspection by the public and if there are any objections/suggestions, it can be given before the concerned authority within one month from the date of publication. The learned counsel submitted that this notification was also hosted in the website of the local administration department and a press release was also issued in Tamil. The learned counsel submitted that there were absolutely no objections from any quarters. That apart, meetings were also held with various representatives of political parties during the years



2016, 2018 and 2019 and after taking their views also, the final notification was issued on 07.03.2019. The learned counsel submitted that the present writ petition has been filed challenging the same after nearly three years and hence this writ petition is liable to be dismissed on the ground of laches.

15. The learned Government Pleader further submitted that once election notification is issued, the same cannot be stalled and this Court should not exercise its jurisdiction under Article 226 of the Constitution of India, since there is a bar under Article 243-O of the Constitution of India. The extent to which the process of delimitation can be interfered was explained by the learned Government Pleader by bringing to the notice of this Court the judgment of the Hon'ble Supreme Court in Anugrah Narain Singh & Another v. State of Uttar Pradesh and Others, dated 10.09.1996. By relying upon this Judgment, the learned counsel submitted that delimitation of Wards cannot be questioned in a Court of law and even such challenge should be made soon after the notification was published in the Gazette. It was further submitted that there was wide publicity and the petitioners never chose to give their objections and therefore, they cannot be allowed to question the final notification of the year 2019 at this point of time and there are absolutely no merits in the present writ petition.

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

17. It is seen from the records that local body elections were notified only pursuant to the orders passed by the Hon'ble Supreme Court in the contempt petition on 05.04.2021. The Supreme Court specifically had fixed a time limit and directed the delimitation process to be completed within two months and the election process to be completed within four months after delimitation. In the present case, the final delimitation notification was issued on 07.03.2019. The delimitation process that has been referred in the order of the Hon'ble Supreme Court pertains to some of the corrections that were carried out and notifications that were issued in that regard. Insofar as the facts of the present case is concerned, it is governed by the earlier final notification issued on 07.03.2019.

18. It is seen from records that the residents of Ambagarathur Village Panchayat made a representation only on 27.05.2021. A careful reading of this representation shows that they came to know about the delimitation and some of the streets and lanes being shifted to Nallambal Village Panchayat and they have requested for retaining the same in the Ambagarathur Village Panchayat itself. In the representation dated 27.05.2021, there is absolutely no mention as to when



they came to know about the merger of some of the streets and lanes to Nallambal Village Panchayat. This becomes more pertinent since that notification was issued in 2019 itself.

19. It should be made clear that this Court will not go into the final decision taken by the Delimitation Committee to merge some of the streets and lanes to Nallambal Village Panchayat. This Court can only go into the issue of the decision making process and see if the respondents have complied with the provisions of the relevant act.

20. Section 2(17) of the Act defines the notification as "notification" means a notification published in the Official Gazette."

21. Paragraph No.8.4 of the counter affidavit explains as to the procedure adopted by the respondents while issuing the draft notification. It is also seen that the draft notification was published in the official gazette and the delimitation proposal was also made available in the respective Commune Panchayat. There was also a press release in Tamil in this regard. The said procedure adopted by the respondents is in line with Section 12 of the Act.

22. It is made clear in the draft notification itself that the objections must be given within one month from the date of publication. Admittedly, no objections were given. Thereafter, the final notification came to be published only on 07.03.2019. This notification has been challenged before this Court in the year 2021. The petitioners probably took advantage of the subsequent notification that was issued for correcting some mistakes/errors, wherein objections were called for and at this point of time, the petitioners/residents gave a representation on 27.05.2021 questioning the final notification dated 07.03.2019 and requested for retaining the concerned streets and lanes in Ambagarathur Village Panchayat. Whatever procedure was adopted, while issuing the correction notification in the year 2021, was adopted even when the earlier notification was issued in the year 2016. Therefore, the petitioners cannot be heard complaining that they were not aware about the earlier notification. By the time the petitioners gave the representation, the delimitation had already come into effect by virtue of the notification dated 07.03.2019.

23. In view of the above, the present writ petition is liable to be dismissed solely on the ground of laches. This is apart from the fact that this Court does not find any infraction in the procedure adopted by the respondents before issuing the final delimitation notification. In other words, this Court does not find any illegality in the decision making process adopted by the respondents. The Hon'ble Supreme Court has already fixed a time limit for the completion of the elections and the elections have already been notified on



22.09.2021 and it is going to be conducted in three phases. At this point of time, the petitioners have chosen to rush to this Court only with an intention to stall the election.

24. This Court does not find any merits in this writ petition and accordingly, the same is dismissed. No costs. Consequently connected Miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

RR

To

- 1.The Chief Secretary  
Government of Puducherry  
Goubert Avenue, Puducherry 605 001.
- 2.The Secretary to Government  
Local Administration Secretariat  
Government of Puducherry  
No.16 Suffren Street,  
Puducherry 605 001.
- 3.The Director,  
Head of Department  
Local Administration Department  
No.16 Suffren Street,  
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- 4.The Chairman  
Office of the Committee for Delimitation of Municipal  
and Panchayat Wards  
No.16 Suffren Street,  
Puducherry-605 001.
- 5.The Commissioner,  
Thirunallar Commune Panchayat,  
Thirunallar,  
Karaikal

+1cc to Mr.R.Saravanan, Advocate SR.No.50439

+1cc to Government Pleader SR.No.50635

W.P.No.16062 of 2021

GJ(CO)

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