



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.3317, 10377, 10965 & 11734 of 2022 and

W.M.P. (MD)Nos.2914, 8245, 7892,

8231, 7378 & 8483 of 2022 & 8304 to 8306 of 2022

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I) W.P. (MD)No.3317 of 2022

Thoothukudi Vadadhisai Hindu Nadar Mahamai

Dharma Karapettai Paripalana Sangam,

(Reg. No.4/1919),

Rep. By its Secretary,

Great Cotton Road, Thoothukudi Town,

Thoothukudi District.

... Petitioner

Vs.

1. The Inspector General of Registration,
(Registration and Societies),
Santhom Church Road,
Chennai District.

2. The District Registrar,
(Registration and Societies),
Thoothukudi, Thoothukudi District.

3. S.Selvakumar

4. M.V.M.Pethupandiyan

5. D.Karthikeyan

6. P.M.Selvaraj

7. A.Sankarakumar

8. S.L.S.S.Thinakaran

9. M.S.P.Thenraj

10.M.Rajamani

11.B.Santhanakumar

12.N.T.Selvaraj

13.M.S.Kamaraj

... Respondents

(R-3 to R-13 are impleaded vide Order dated 18.04.2022
in W.M.P. (MD)No.3679 of 2022)

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings issued by the second respondent District Registrar in Na.Ka.No.6959/A3/2021 dated 02.02.2022, quash the same and further direct the second respondent District Registrar to register forthwith the Form-VII submitted by the petitioner dated 01.11.2021.



For Petitioner : Mr.Isaac Mohanlal,
Senior Counsel,
for M/s.Isaac Chambers.
For R-1 & R-2 : Mr.K.S.Selvaganesan,
Additional Government Pleader.
For R-3 to R-13 : Mr.D.Nallathambi

* * *

II) W.P. (MD)No.10377 of 2022

R.Jeyakumar ... Petitioner

Vs.

1. The Inspector General of Registration,
Inspector General of Registration Office,
100, Santhome Road,
Chennai - 600 004.
2. The District Registrar (Society Registration),
The District Registrar Office,
Polepettai, Thoothukudi.
3. C.Ponraj
4. Thoothukudi Vadadhisai Hindu Nadar Mahamai
Dharma Karapettai Paripalana Sangam,
(Reg. No.4/1918-1919),
Rep. By its Secretary,
Great Cotton Road,
Thoothukudi -628 002. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing respondents 1 and 2 to hold elections to the fourth respondent society in the presence of an observer appointed by this Court by permitting all eligible members of the society to vote viz., 933 members as per annexure Form-VI.

For Petitioner : Mr.VR.Shanmuganathan
For R-1 & R-2 : Mr.K.S.Selvaganesan,
Additional Government Pleader.
For R-3 : Mr.G.Mohankumar
For R-4 : Mr.Isaac Mohanlal,
Senior Counsel,
for M/s.Isaac Chambers.
* * *



III) W.P. (MD)No.10965 of 2022

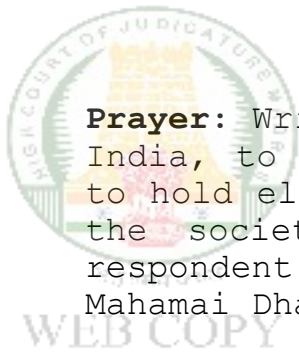
R.Muthu Selvam

... Petitioner

Vs.

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1. The Inspector General of Registration,
Inspector General of Registration Office,
100, Santhome Road,
Chennai - 600 004.
 2. The Deputy Inspector General of Registration,
O/o.The Deputy Inspector General of Registration,
Palayamkottai,
Tirunelveli - 627 003.
 3. The District Registrar (Society Registration),
The District Registrar Office,
Polepettai,
Thoothukudi.
 4. Thoothukudi Vadadhisai Hindu Nadar Mahamai
Dharma Karapettai Paripalana Sangam,
(Reg. No.4/1918-1919),
Rep. By its Secretary,
Great Cotton Road,
Thoothukudi -628 002.
 5. C.Ponraj
 6. C.S.Rajendran
 7. C.Pethuraj
 8. M.Paulpandi,
District Registrar (Society Registration),
District Registrar Office,
Polepettai,
Thoothukudi.
 9. Selvarani,
Office Assistant,
District Registrar Office,
Polepettai,
Thoothukudi.
 10. Marimuthu Muneeswaran,
Sub Registrar (i/c.),
Kayalpatinam,
Thoothukudi District.
- ... Respondents



Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to hold election as per the notification issued by the Secretary of the society dated 05.06.2022 as per the bylaw of the fourth respondent society, namely, Thoothukudi Vadathisai Hindu Nadar's Mahamai Dharma Karapettai Sangam.

For Petitioner : Mr.Sricharan Rangarajan,
for Mr.T.Antony Arulraj.
For R-1 to R-3 : Mr.K.S.Selva Ganesan,
Additional Government Pleader.
For R-5 to R-7 : Mr.G.Mohankumar
For R4 : Mr.Isaac Mohanlal, Senior Counsel
* * *

IV) W.P. (MD) No.11734 of 2022

1. S.Selvakumar
2. M.V.M.Pethupandiyan
3. D.Karthikeyan
4. P.M.Selvaraj
5. A.Sankarakumar
6. S.L.S.S.Thinakaran
7. M.S.P.Thenraj
8. M.Rajamani
9. B.Santhanakumar
- 10.N.T.Selvaraj
- 11.M.S.Kamaraj

... Petitioners

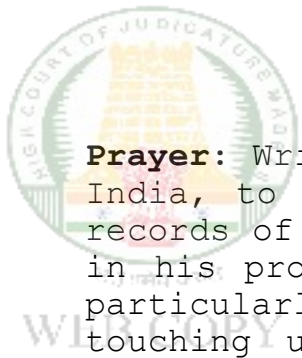
Vs.

1. The Inspector General of Registration,
100, Santhome High Road,
Raja Annamalai Puram,
Chennai - 600 004.
2. The District Registrar,
(Registration and Societies),
Thoothukudi, Thoothukudi District.
3. Thoothukudi Vadadhisai Hindu Nadar Mahamai
Dharma Karapettai Paripalana Sangam,
(Reg. No.27/1960),
Rep. By its Secretary,
Great Cotton Road, Thoothukudi Town,
Thoothukudi District.

4. R.Jeyakumar

... Respondents

(As a representative of newly included 191
members in the executive meeting dated
30.10.2021 of 3rd respondent society)



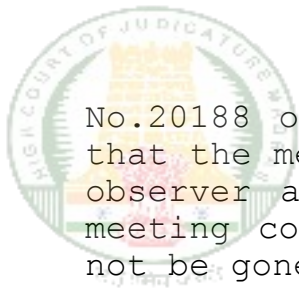
Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the second respondent herein in his proceedings in Na.Ka.No.6959/A3/2021 dated 02.02.2022, more particularly regarding the findings related to Question No.1 touching upon the validity of Executive Committee meeting dated 30.10.2021 and quash the same and further direct the second respondent herein to re-enquire the issue with available materials on record.

For Petitioners : Mr.P.Valliappan,
for Mr.Nallathambi.
For R-1 & R-2 : Mr.K.S.Selva Ganesan,
Additional Government Pleader.
For R-3 : Mr.Isaac Mohanlal,
Senior Counsel,
for M/s.Isaac Chambers.

C O M M O N O R D E R

Since all these four writ petitions are interlinked, they were heard together and are disposed of by a common order. Heard the learned Senior counsel and the learned counsel appearing for the writ petitioners and the learned Additional Government Pleader appearing for the official respondents and the learned counsel appearing for the private respondents.

2.The subject matter pertains to the affairs of Thoothukudi Vadadhisai Hindu Nadar Mahamai Dharma Karapettai Paripalana Sangam. It was registered as a society under the Societies Registration Act, 1860 in the year 1919. Following the enactment of the Tamil Nadu Societies Registration Act, 1975, the society is deemed to be registered under the said Act. The society is governed by its own by-laws. An executive committee comprising 25 members administers the society. The election for electing the office bearers of the society is held once in three years. The election for the triennium 2019-21 was held on 10.08.2019 pursuant to the direction given by the Hon'ble Division Bench vide Order dated 08.05.2019 in W.A.(MD) No.1603 of 2018 etc., One S.K.S.C.Natarajan was elected as the President of the society while one P.Vinayagamoorthy was elected as the Secretary. They were at loggerheads on several issues including the total number of members of the society. The matter is presently pending before the Hon'ble Supreme Court in SLP(C) No.18328 of 2019 etc., While according to one group, the total number of members is 774 + 191, the other group would claim that the number of members is 774. At this stage, Shri.Natarajan passed away on 30.11.2020. The death of Natarajan did not put an end to the infighting. While one Ponraj wanted to convene an extraordinary general body meeting on a particular date, the society wanted to hold the special general body meeting on another date. By Order dated 11.11.2021, W.P.(MD)



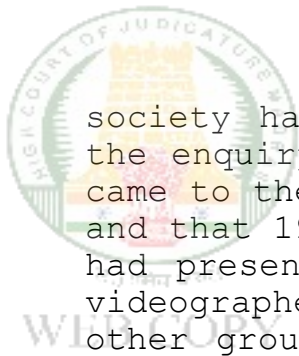
No.20188 of 2021 filed by Ponraj was disposed of with a direction that the meeting can be convened on 05.12.2021 in the presence of an observer appointed by the District Registrar. It appears that the meeting could not be held on 05.12.2021 due to reasons which need not be gone into.

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3.Earlier, the society convened an executive committee meeting on 30.10.2021. The stand of the petitioners in WP.(MD)No.3317 of 2022, W.P.(MD)No.10965 of 2022 and W.P.(MD)No.10377 of 2022 is that the executive committee meeting was, in fact, held on the said date and a majority of 191 members were admitted. The stand of the petitioners in W.P.(MD)No.11734 of 2022 is that on the said date, the meeting was not conducted.

4.Form-VII was presented before the District Registrar (Society), Thoothukudi on 01.11.2021. The registrar however declined to accept the same. Hence, W.P.(MD)No.21013 of 2021 was filed for directing the Registrar to file the said Form-VII dated 01.11.2021. The writ petition was disposed of by directing the Registrar to take a call in the matter. Pursuant thereto, the Registrar held an enquiry. There was representation on both sides. By order dated 02.02.2022, the Registrar even while accepting that the meeting was held on 30.10.2021, declined to file the Form-VI and Form-VII on the ground that the society has not presented the annual returns from 2013-14 to 2020-21. It was clarified that after the society obtained exemption from the Government under Section 54 of the Tamil Nadu Societies Registration Act, the forms filed by the society will be accepted. Challenging the said order, the society filed W.P.(MD) No.3317 of 2022. Since the said order contained a finding that the meeting of the executive committee was held on 30.10.2021 and that 191 members were admitted, challenging that portion of the order, W.P.(MD)No.11734 of 2022 came to be filed. The prayer in W.P.(MD) No.10377 of 2022 and W.P.(MD)No.10965 of 2022 is that the society must be directed to hold the elections by permitting all the 933 members as per annexure to Form-VI to take part in the election to be held.

5.The learned Senior Counsel appearing for the writ petitioner in W.P(MD)No.3317 of 2022 and the learned counsel appearing for the petitioners in W.P.(MD)No.10377 of 2022 and W.P.(MD)No.10965 of 2022 reiterated all the contentions set out in the affidavits filed in support of the writ petitions. According to them, the executive committee meeting was actually convened on 30.10.2021 and that 191 members were admitted to the membership of the society. It is true that three of the members shown to have been admitted had passed away. But that would not in any way vitiate the resolution passed by the executive committee. According to them, a number of applications had been received earlier and since they were found to be in order, they were all accepted. The executive committee was not aware that three of the applicants had passed away in the meanwhile. The



society had produced the relevant minutes and the Register before the enquiry authority. The Registrar after holding enquiry rightly came to the conclusion that the executive committee meeting was held and that 191 members were admitted. It is true that the other group had presented video evidence. The entire event had allegedly been videographed. According to the learned counsel appearing for the other group, even a casual viewing of the video would reveal that the meeting was not at all conducted on the said date. The stand of the learned counsel for the petitioners in WP.(MD)Nos.3317, 10965 and 10377 of 2022 is that this is a pure question of fact ; when once the registering authority had come to a certain conclusion based on the entries made in the register, it is not open to the writ Court to undertake further enquiry ; if the other side is still aggrieved, it is always open to them to move the jurisdictional civil Court. However, they would contend that the ground for returning the forms filed by the petitioner society is unsustainable.

6.Per contra, the learned counsel appearing for the petitioner in W.P.(MD)No.11734 of 2022 would strongly contend that the finding of the District Registrar that the executive committee meeting was held on 30.10.2021 is perverse. Even a casual viewing of the compact disk containing the video of the events would have revealed the truth. In the said recording, the Secretary Shri.Vinayagamoorthy is heard uttering that no meeting would be held. He would add that the membership of the society should be taken only as 774. The fact that some of the newly admitted members were already dead on the date of admission indicates utter non-application of mind. He also urged that when the Hon'ble Supreme Court is seized of the matter and when this Court on the previous occasions confined the voting right to 774 members, it would be improper to permit the newly admitted 191 members also to take part in the voting process. While the District Registrar was justified in returning the Form-VI and Form-VII submitted on 01.11.2021, he erred in giving a finding of fact that the meeting of the executive committee was held on 30.10.2021.

7.I carefully considered the rival contentions and went through the materials on record.

8.Before I discuss the facts, it is better to remind oneself about the prevailing legal position. It has been held time and again that acceptance or rejection of Form-VII is a ministerial act which is not amenable to writ jurisdiction (vide 2008 (4) LW 760 (V.Sobana Kumar V. District Registrar, Registrar of Societies, Marthandam) and (2013) 2 CTC 241 (Yadhavar Kalvi Nithi Registered Society V. State of Tamil Nadu). But there is still a limited scope for intervention in exercise of the power of judicial review. The Hon'ble Full Bench in 2005 SCC OnLine Mad 238 (C.M.S.



Evangelical Suvi David Memorial Higher Secondary School Committee V. District Registrar ,Cheranmahadevi) held as follows :

"18.The power of the Registrar to enquire into the affairs of the society is only to hold a summary inquiry for his own satisfaction. The said power cannot be construed as the power of appeal. Under Section 36, the Registrar has not been empowered to adjudicate upon the conflicting claims to represent the society based upon question of fact. A plain reading of section 36 shows that the Registrar could look only the provisions of the Act and the Rules and prima facie materials to arrive at a conclusion either to believe or not to believe Form No.VII in order to effect change in the register. The power of the Registrar to call for information and explanation under Section 34 does not contemplate any power to examine witnesses or to allow opportunity for cross examination of witnesses. The power in our view is incidental and it is only for the purpose of maintaining correct records. As the power to conduct inquiry is only limited in order to find out whether constitution of members are valid, the inquiry is limited only for the purpose of making entries in the register. However, the exercise of power must not be arbitrary as the orders passed or directions issued by the Registrar is amenable to challenge in the Writ Jurisdiction."

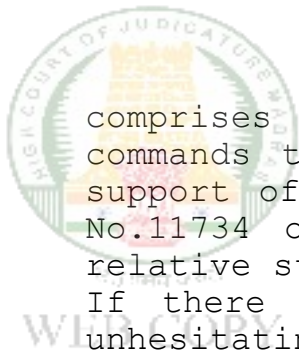
Applying the principles laid down in the above decisions to the facts of the case, it is seen that rejection of Form-VII is not based any of the outcome of enquiry by the Registrar but only on the ground of non-filing of annual returns for the previous years. This Court would be justified in interfering with the order impugned in W.P.(MD)No.3317 of 2022 if the said ground is found to be erroneous.

9.The District Registrar formulated two issues for consideration. They are as follows:-

"a) Whether the executive committee meeting was in fact convened on 30.10.2021 as per the notification dated 19.10.2021?

b) Whether the District Registrar was justified in returning the Form-VI and Form-VII submitted on 01.11.2021 by relying on the circular Nos.07/2011 and 34579/11/2011 dated 27.11.2011 issued by the Inspector General of Registration?"

10.There is no dispute that the society is governed by the executive committee comprising 25 members and that the decisions are to be taken by majority. At present, the executive committee



comprises 23 members. The group led by Shri.P.Vinayagamoorthy commands the support of 12 members. The other group commands the support of only 11 members. The number of petitioners in W.P.(MD) No.11734 of 2022 is only 11. There is no dispute regarding the relative strength of the rival groups. This has made my job easier. If there is even a slight doubt in this regard, I would have unhesitatingly concluded that the parties must go before the civil Court and establish their claim. The events date back to October 2021. We are now in June 2022. Even now the relative strength remains the same. The Registrar had viewed the video-graph presented by the petitioners in W.P.(MD)No.10377 of 2022. But he chose to go by the minutes and the entries in the register maintained by the society and came to the conclusion that the meeting was held on the specified time, date and venue. We are not dealing with a criminal case. The standard of balance of probabilities will have to be applied. When the group led by Shri.P.Vinayagamoorthy asserts before the Registrar that they command majority in the executive committee and they are able to substantiate the same before me also, it is safe to go by the version projected by them. When the competent authority has rendered a finding of fact in favour of one group and the same is very much in consonance with the factual position that prevails even as on date, I have no hesitation to sustain the finding of the District Registrar that the meeting was held on 30.10.2021. I, therefore, dismiss W.P.(MD)No.11734 of 2022.

11. The next question that arises for consideration is whether the District Registrar was justified in returning the forms by relying on Circular No.7 of 2011 in Na.Ka.No.34579/I1/2011, dated 27.07.2011. It had been directed thereunder that only if all the returns and forms to be filed under Section 16 of the Tamil Nadu Societies Registration Act, 1975 have already been filed in proper form, then only, Form VII can be accepted. In this case, admittedly, the annual returns for the previous years had not been filed. That is why, the Form VII submitted on 01.11.2021 was returned. The issue as to whether the Registrar could have returned the Form VII for the said reason is no longer *res integra*. Vide order dated 08.02.2021 in W.P.(MD)No.103 of 2021 (***Hajee K.K.Ibrahim Ali Higher Secondary School Society V. The Inspector General of Registration, Chennai***), I had held as follows:-

"6. ...

The other reason is predicated on the Circular No.7 of 2011, dated 27.07.2011 issued by Inspector General of Registration. The effect of the said circular is that Form VII will not be taken on file unless the returns for the preceding year have already been filed. This circular was considered by a learned Judge of this Court in the decision reported in **(2016) 6 MLJ 568 (Kallar Kalvi Kalazhagam Vs. The District Registrar (Admn.) Periyakulam and Others)**. The learned Judge had held that no circular of the Inspector General of Registration can



override the ingredients of statute. The filing of Form VII could be refused to be taken on file only for the reasons set out in the statute. Respectfully following the said decision, I hold that reliance placed on the said circular is misplaced."

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As pointed out by the learned Senior Counsel appearing for the Society, this Circular has been substantially modified by Circular No.3 of 2022 dated 27.05.2022. The position that now prevails is that unless there is any restraint order passed by the competent Court, the District Registrar should accept the forms and returns filed by the society. The change in policy can very well be taken note of by the court. The order impugned in W.P.(MD)No.3317 of 2022 in so far as it declines to take Form-VI and Form-VII filed on 01.11.2021 is set aside. W.P.(MD)No.3317 of 2022 stands allowed.

12.The next question that falls for consideration is whether all the newly added members also should be allowed to vote in the general body meeting. It is true that the Hon'ble Division Bench in W.A.(MD)Nos.1603, 1711 and 1712 of 2018 set aside the order passed by a learned Single Judge and the matter is presently pending before the Hon'ble Supreme Court in SLP(C) Nos.18328 of 2019 etc. filed by the society. But the pendency of the SLP will not in any way affect the power of the executive committee from admitting new members. The by-law regarding admission of new members is as follows:-

"7B.மெம்பராக சேர விரும்புகிறவர்கள் அதற்கென்று உள்ள பாரத்தை சங்கத்தில் ரூ.25/- கொடுத்து வாங்கி அந்த பாரத்தை முறைப்படி பூர்த்தி செய்து விண்ணப்பதாரரை முன்மொழிபவராக நிர்வாகசபை உறுப்பினர்களின் ஒருவரும் வழிமொழிபவராக சங்க உறுப்பினர்களில் ஒருவரிடமும் கையெழுத்து பெற்று ஆகஸ்ட் 1-ம் தேதி முதல் 31-ம் தேதிக்குள் பிரவேசக் கட்டணம் ரூ.100/-உடன் கொடுக்க வேண்டும். அடுத்து கூடும் நிர்வாகசபைக் கூட்டத்தில் அவ்விண்ணப்ப பாரம் பரிசீலிக்கப்பட வேண்டும்."

In this case after giving notice to the executive committee was convened. By majority, the executive committee was very much empowered to admit new members and no exception can be taken to it. On 16.11.2021, another executive committee meeting was held and notice for holding the said meeting was issued on 06.11.2021. One of the agenda was to place on record the filing of the resolutions passed on 30.10.2021 before the District Registrar in Form VII. In the said executive committee meeting, the minority group had also taken part. The minutes of the meeting held on 16.11.2021 had been enclosed in the additional typed set of papers dated 16.06.2022 in WP(MD)No.3317 of 2022. The signatures of as many as 22 members of the executive committee is found therein.

13.It is beyond dispute that the executive committee is empowered to admit new members. It is not the case of anybody that



be admitted. I have already set aside the order of the District Registrar insofar as it declined to receive Form-VI and Form-VII filed on 01.11.2021. Therefore, all the persons who are shown as members in Form-VI presented on 01.11.2021 are entitled to take part in the proposed general body meeting.

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14.Of course, the prayer in W.P.(MD)No.10377 of 2022 has been erroneously couched. The petitioners want this Court to direct the Registrar to direct the society to hold the elections. It has been held that as per Section 36 of the Tamil Nadu Societies Registration Act, the Registrar does not have the power to direct the society to hold the elections [vide *C.M.S.Evangelical Suvi David Memorial Higher Secondary School Committee, Karisal, through its Secretary, Sri S. David Stephen S/o Samuel, Karisal, Ambasamudram Taluk Tirunelveli District and others Vs. The District Registrar Cheranmahadevi, Tirunelveli Dist. and others*, (2005) 2 CTC 161]. As per Section 15(4) of the Tamil Nadu Societies Registration Act, the period of tenure of the executive committee is only three years. It is a statutory mandate that the elections will have to be held once in three years. While the Registrar of Societies cannot direct the society to hold the elections, the writ Court can always issue such a direction even against the society provided it discharges any public function. The society in question runs as many as five educational institutions which are also receiving State aid. Applying the ratio laid down in *Janet Jeyapaul v. SRM University* (2015) 16 SCC 530, *BCCI v. Cricket Association of Bihar* (2015) 3 SCC 251 and *Maharashtra Chess Association v. UOI* (2020) 13 SCC 285, I direct that election must be held and the members of the executive committee chosen in the general body meeting to be held on 03.07.2022. The District Registrar (Societies), Thoothukudi is directed to depute an observer to oversee the election process. The jurisdictional police is directed to provide police protection to ensure that the meeting is held peacefully. I make it clear that under any circumstance the general body meeting is held and that any person attempting to interrupt the peaceful holding of the meeting should be strictly dealt with as per law. WP(MD)Nos.10377 & 10965 of 2022 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

23/06/2022

Sub Assistant Registrar(CS)

PMU/skm



To:

1. The Inspector General of Registration Office,
100, Santhome Road,
Chennai - 600 004.

2. The Deputy Inspector General of Registration,
O/o.The Deputy Inspector General of Registration,
Palayamkottai,
Tirunelveli - 627 003.

3. The District Registrar (Society Registration),
The District Registrar Office,
Polepettai,
Thoothukudi.

+2 CC to M/s.ISAAC CHAMBERS, Advocate (SR-27253, 27255[F]
dated 21/06/2022)

+4 CC to M/s.D. NALLATHAMBI, Advocate (SR-27228,27229,27230 & 27231
[F] dated 21/06/2022)

+1cc to MR.V.R.SHANMUGANATHAN,Advocate, SR.No.27242
DATED: 21.06.2022

+1cc to MR.T.ANTONYARULRAJ,Advocate, SR.No. 27534 DATED:22.06.2022

+1cc to MR.SPL GP,Advocate, SR.No.27440 DATED:22.06.2022

W.P. (MD)Nos.3317, 10377, 10965 & 11734 of 2022

20.06.2022

CK(CO)

GC(23.06.2022) 12P 13C