



C.R.P.No.600 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 17.03.2023

Delivered on 28.04.2023

CORAM:

The Hon'ble MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.600 of 2021
and C.M.P.No.5180 of 2021

K.Parthiban

...Petitioner/Petitioner/ Defendant

-Vs-

1.K.B.Irudhayam

2.Archana Sahaya Rani

3.Abinaya Sheril Roshik

4.K.B.Joseph Immanuel

5.Paster Victor John

6.Edward Felix

7.The District Collector,
Kancheepuram District,
Kancheepuram - 631 501.

8.The Special District Revenue Officer,
(DRO)(L/A), Banglore – Chennai Express Way Project,
Kancheepuram – Thiruvallur District,
No.15, Visalakshi Nagar, Sevlilimedu,
Kancheepuram – 631 501.

9.The Special Tahsildar, (L/A), Unit – III,
Banglore – Chennai Express Way Project,
Kancheepuram – Thiruvallur District,
No.15, Visalakshi Nagar, Sevlilimedu,
Kancheepuram – 631 501.

...Respondent/Respondents/ Plaintiffs



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[Respondents 7 to 9 suo moto impleaded as party Respondents vide Court Order dated 16.03.2022 in C.R.P(PD)No.600 of 2021 and C.M.P.No.5180 of 2021.]

Prayer:- Civil Revision Petition filed under Article 227 of CPC., to set aside the fair and decreetal order dated 21.12.2020 in I.A.No.216 of 2019 in O.S.No.225 of 2018 on the file of the learned District Munsif-cum-Judicial Magistrate at Sriperumbudur.

For Petitioner	: Mr.D.Murthy
For R1 to R6	: Mr.S.L.Sudarsanam
For R7 to R9	: Mr.V.Jeevagiridharan
	Additional Government Pleader

ORDER

This Civil Revision Petition is filed by the Defendant in the suit in O.S.No.225 of 2018 on the file of the learned District Munsif-cum-Judicial Magistrate at Sriperumbudur.

2. The brief facts, which are necessary for disposal of this Civil Revision Petition, are as follows:

2.1. The suit is filed by the Plaintiffs 1 to 6 against the Defendant. The Plaintiffs in O.S.No.225 of 2018 had filed the suit seeking to declare the sale deed dated 23.05.1996 bearing Document No.2868/1996 on the file of the Sub Registrar, Sriperumbudur, as null and void and not binding



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on the Plaintiffs. Also, consequential injunction to restrain the Defendant from encumbering or alienating the suit properties to any third parties.

2.2. The Defendant in O.S.No.225 of 2018 had filed the Petition in I.A.No.216 of 2019 in O.S.No.225 of 2018 seeking to reject the plaint in O.S.No.225 of 2018. It is the case of the Defendant that the property was sold by the mother of the Plaintiffs 1, 4 to 6/grand mother of the Plaintiffs 2 and 3 as legal heir of Balayya Naidu to the Defendant. Subsequent to the purchase, the National Highways Department issued paper publication notifying the lands acquired for the National Highways. As a land owner/land loser, the Defendant was the party, to whom the notice was issued under the Land Acquisition Act. At that stage, the Plaintiffs in the suit – the sons and grand daughters of Balayya Naidu had filed the suit seeking to declare the sale deed executed by their mother/grand mother in favour of the Defendant as null and void. Once the land acquisition proceedings commences, as per the Land Acquisition Act, any dispute between the owners or third parties regarding the land acquired by the National Highways Department under the National Highways Act shall be referred to the competent Civil Court of original jurisdiction. In this case, it



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is the Principal District Judge of the District concerned. The Plaintiffs in O.S.No.225 of 2018 had filed the suit before the Court of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur. After receiving the summons and after entering appearance in the suit, the sole Defendant had filed I.A.No.216 of 2019 under Order VII, Rule 11 of C.P.C. to reject the plaint in O.S.No.225 of 2018 stating that after notification of the land acquisition proceedings, the property vests with the Government. Therefore, all disputes had to be referred to the Court of competent Civil jurisdiction. As per the National Highways Act, the Principal District Judge of the District is the competent Court of civil jurisdiction. Instead, the Plaintiffs in O.S.No.225 of 2018 had instituted the suit before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur which is not maintainable. Therefore, the Defendant had filed petition under Order VII, Rule 11 of C.P.C. to reject the plaint. The learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, dismissed the petition in I.A.No.216 of 2019 in O.S.No.225 of 2018. Therefore, the Defendant in the suit and the Petitioner in I.A.No.216 of 2019 had filed this Civil Revision Petition under Article 227 of the Constitution of India to set aside the order passed by the learned District Munsif-cum-Judicial Magistrate,



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Sriperumbudur in I.A.No.216 of 2019 in O.S.No.225 of 2018, dated 21.12.2018.

3. Mr.D.Murthy, learned Counsel for the Revision Petitioner submitted that the Revision Petitioner is the Defendant in O.S.No.225 of 2018. It is his contention that he had purchased the property and was in possession of the property. Subsequently, the National Highways Department acquired the land for the purpose of the Bangalore to Chennai Express way. At that stage, when the National Highways Act was invoked and a notification was issued under Section 3(d) of the National Highways Act, 1956, the sons and grand daughters of the vendor of the Petitioner herein had instituted the suit in O.S.No.225 of 2018 seeking the relief of declaration that the sale deed executed in favour of the Petitioner herein, Defendant in the suit, as null and void and for the consequential relief of permanent injunction not to encumber or alienate the suit properties to any third parties till the suit is disposed of.

4. It is his contention that after the notification of the land acquisition proceeding, no civil suit is maintainable and also the



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Respondents 1 to 6 herein had filed W.P.No.32063 of 2018 wherein this Court on 08.01.2019 had directed them to adjudicate the dispute with the Civil Court of original jurisdiction, meaning the Principal District Judge of the District concerned. In the light of the provisions of the National Highways Act under Section 3(d)(2) of the National Highways Act, 1956 and Section 3(h)(4), the suit filed by the Respondents 1 to 6 herein as Plaintiffs in O.S.No.225 of 2018 before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, is not at all maintainable. Therefore, the Petitioner herein as Defendant filed I.A.No.216 of 2019 in O.S.No.225 of 2018, seeking to reject the plaint. The learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, ignored the points raised by the Petitioner herein and dismissed the Petition. Aggrieved by the order of dismissal dated 21.12.2020 in I.A.No.216 of 2019 in O.S.No.225 of 2018 by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, the Defendant in O.S.No.225 of 2018 had filed this Civil Revision Petition under Article 227 of the Constitution of India, seeking to set aside the same.

5. Mr.S.L.Sudarsanam, learned Counsel for the Respondents 1 to 6 submitted his arguments. As per his submission, the suit property was



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purchased in 1975 by Mr.Balayya Naidu, the husband of the Defendant's vendor. The said Balayya Naidu died in the year 1976. He had five sons. The Defendant in O.S.No.225 of 2018 had purchased the property from the wife of Balayya Naidu and mother of the Plaintiffs 1, 4 to 6/grand mother of Plaintiffs 2 and 3 in O.S.No.225 of 2018 through a registered sale deed in the year 1996. She sold it as such. Even though she is the exclusive owner of the property, she has only a share with her children as the surviving heir of the deceased Balayya Naidu. Therefore, she has 1/6th share only in the property. She had sold the property in excess of her share. The plaintiffs in the suit in O.S.No.225 of 2018 came to know about the land acquisition proceeding only from the notification. The notification was issued, and the notice was issued to the landlord of the property/owner of the property, Balayya Naidu. Only then the Plaintiffs came to know about the same. The notification was published in the newspapers on 08.02.2018. Immediately, the legal heirs of Balayya Naidu had filed the suit and also issued notice to the officials involved in the land acquisition proceeding, the Special District Revenue Officer (Land Acquisition) dated 19.11.2018. They obtained an encumbrance certificate, and only then they came to know that the mother of Plaintiffs 1, 4 to



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6/grandmother of Plaintiffs 2 and 3 had sold the property in 1996. They sought legal opinion. Accordingly, on legal opinion, they had instituted the suit to declare the sale deed as null and void and not binding on the Plaintiffs. They had filed 20 documents along with the plaint. The Plaintiffs 1, 4 to 6 are the sons of Balayya Naidu and the Plaintiffs 2 and 3 are the daughters of K.B.John Basco who is the pre-deceased son of Balayya Naidu. On taking the encumbrance certificate from the Registrar Office, they came to know about the sale executed by the mother of Plaintiffs 1, 4 to 6/grandmother of Plaintiffs 2 and 3. Therefore, they had filed the suit to declare the sale deed executed by the mother of Plaintiffs 1, 4 to 6/grandmother of Plaintiffs 2 and 3 in favour of the Defendant in O.S.No.225 of 2018 as null and void and seek partition of the same. Meanwhile, the Revenue Authorities were about to disburse the money to the Defendant. The very same Plaintiffs filed a Writ Petition in W.P.No.32063 of 2018 seeking direction against the District Collector, Kancheepuram District, Special District Revenue Officer, (DRO) (L/A) Chennai Express Way Project Kancheepuram – Thiruvallur District, the Special Tahsildar (Land Acquisition), Bangalore – Chennai Express Way Project and Defendant in the suit as 4th Respondent, restraining the



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Respondents' Authorities under the Land Acquisition Act from disbursing the amount to the Defendant in the suit, the same was disposed of on 08.01.2019.

6. The learned Writ Court had passed the following order:

“3.Today, when the matter is taken up for hearing, the learned Counsel appearing for the 4th Respondent admitted the fact that the dispute existing between the Petitioners and 4th Respondent, and a civil suit is also pending before the Civil Court. The learned Counsel further submitted that the matter may be referred to the concerned authority under Section 3(H) (4) of the National High Ways Act for apportionment of compensation. The learned Counsel appearing for the Petitioners also has no objection for the same.

4.Considering the fact that now the Award has been passed, the 2nd Respondent is directed to refer the matter before the competent authority under Section (H) (4) of the National High Ways Act within a period of four weeks from the date of receipt of a copy of this order.”

7. The learned Counsel for the Respondents 1 to 6 contended that the Petition filed under Order VII Rule 11(a) and (d) of CPC seeking to reject the plaint filed by the Defendant was resisted by the Plaintiffs by filing counter as Respondents in I.A.No.216 of 2019. The order of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, dated 21.12.2020 in I.A.No.216 of 2019 in O.S.No.225 of 2018 is a well-reasoned order and it does not warrant any interference by this Court.



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Further, the learned Counsel for the Respondents 1 to 6 contended that after the order was passed in I.A.No.216 of 2019 in O.S.No.225 of 2018 by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, dismissing the Petition, the Defendant had filed two other I.A.Nos.1 and 2 of 2020 in O.S.No.225 of 2018. I.A.No.1 of 2020 in O.S.No.225 of 2018 is with regard to the preliminary issue before framing of issues by the Court. The preliminary issue is with regard to the maintainability of the suit. I.A.No.2 of 2020 in O.S.No.225 of 2018 is filed on the same day for the relief under the Court Fees and Suit Valuation Act that the value of the property and the relief sought in the plaint are not at all triable by the District Munsif Court. It has to be considered only by the learned Principal District Judge of the District concerned. In both the Petitions, enquiry is pending. Therefore, the learned Counsel for the Respondents 1 to 6 sought to dismiss this Civil Revision Petition as having no merit with a direction to the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, to dispose of the suit in O.S.No.225 of 2018.

8. By way of rejoinder, the learned Counsel for the Revision Petitioner submitted that in the Writ Petition filed by the Plaintiffs herein,



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seeking injunction against the Respondents' Authorities under the National Highways Act not to disburse the amount, the learned Judge had observed that, as in the above para, it is to be considered that the District Munsif Court has no jurisdiction after the land acquisition proceedings have commenced and after notification. It is to be treated as the property vests with the Government of India (National Highways Department). Therefore, at that stage, the declaration sought in this suit will not arise. Not only that, once the notification has been issued by the Highways Authority, any subject matter of the dispute regarding the land acquired by the land acquisition officials of the State shall be considered only by the Court of competent jurisdiction i.e. the District Judge in the District concerned. Here, it is the case of the learned Principal District Judge, Kancheepuram at Chengalpattu, under whose jurisdiction the District Munsif-cum Judicial Magistrate functions. The learned Writ Court had directed to consider the matter before the competent Court of original jurisdiction under the Highways Act. Also, the learned Counsel for the Revision Petitioner invited the attention of this Court that at the earliest point of time, this Court had *suo moto* impleaded the Highways Authorities on 16.03.2022. The learned Government Pleader had mentioned about the circular/proceedings of the



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Competent Authority under Section 3(h)(4) of the National Highways Act, 1956, had been made over to the learned Principal District Judge, Kancheepuream at Chengalpattu.

9. The learned Counsel for the Revision Petitioner in his rejoinder had relied on the following rulings:-

- i. In the case of ***Arumugam @ Vadivel Vs. The Special District Revenue Officer, Land Acquisition, Bangalore-Chennai National Highways Project, Vellore District – 9. and Others in W.P.No.24316 of 2022***, dated 12.10.2022.
- ii. In the case of ***Ram Sarup & Others Vs. Union of India & Others*** reported in CDJ 2016 PHC 569.
- iii. In the case of ***Rajaram Waman Rane & Others Vs. Ramakrishna Mahadev Rane & Others*** reported in CDJ 2018 BHC 1866.

10. Therefore, it is the contention of the learned Counsel for the Revision Petitioner that the District Munsif Court is not a Court of competent jurisdiction after notification of the land to be acquired by National Highways (Land Acquisition). Any adjudication of any dispute warranting adjudication is to be referred to the Court of original jurisdiction of the District concerned and it is to be decided by the District



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Judge. It is the further contention of the learned Counsel for the Revision Petitioner that the Plaintiffs cannot claim ignorance as one of the sons of Balayya Naidu, K.B.John Bosco was the witness to the sale deed executed by the wife of Balayya Naidu. The said K.B.John Bosco's daughters are Plaintiffs 2 and 3 in the suit. Also, the learned Counsel for the Revision Petitioner submitted that along with the sale deed there was a summanda patram (Compromise deed) which is an unregistered document, wherein the Plaintiffs herein had agreed to the terms of settlement and the patta No.389 for the suit property was in the name of the Defendant herein. The learned Counsel drew the attention of this Court after the conclusion of the argument on whether the suit in O.S.No.225 of 2018 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, can be withdrawn and transferred to the Court of the learned Principal District Judge, Kancheepuram at Chengalpattu, which is the competent Court of original jurisdiction as far as the Highways Act. Both parties submitted it could be done. At the same time, the learned Counsel for the Revision Petitioner submitted that without prejudice to the contention raised by the Defendant, the suit may be withdrawn from the Court of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, and transferred



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to the learned Principal District Judge, Kancheepuram at Chengalpattu. At the same time, the Plaintiffs cannot claim that they are entitled to a share in the property. It is their only intention to get unlawful gains. The Court should be able to arrive at the conclusion that the Plaintiffs in the suit have an undivided share in the property. If they are entitled, then the Court can decide. Without entitlement, they cannot claim a share of the award amount that is passed by the Court.

11. On perusal of the contents of the Petition in I.A.No.216 of 2019 in O.S.No.225 of 2018, the order passed by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, cannot be considered as perverse. The points raised regarding territorial jurisdiction, pecuniary jurisdiction and exclusive Court as per the Highways Act, is the Principal District Judge of the District. Therefore, the argument of the learned Counsel for the Petitioner in the Civil Revision Petition as Defendant in the suit was rejected by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur. The Defendant in the suit had filed this Civil Revision Petition. The Defendant had filed I.A.No.1 of 2020 is also with regard to the jurisdictional maintainability of the suit. This can be considered only by



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the learned Principal District Judge, Kancheepuram at Chengalpattu.

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12. The learned Counsel for the Revision Petitioner also placed reliance on the provisions of Sections 3(d) and 3(h) of the National Highways Act, which are to be considered only as the Civil Court of original jurisdiction. Meanwhile, there is a reference by the learned Judge of this Court, after *suo moto* impleading the Highways Authority and the Revenue Authorities as necessary parties to the Civil Revision Petition. Accordingly, the learned Government Pleader for the State Authorities in this Civil Revision Petition submits that the proceedings of the Revenue Officers have been circulated.

13. As per the report received from the learned Principal District Judge, Kancheepuram at Chengalpattu on 26.04.2022, the papers filed by the National Highways Authorities before the learned Principal District Judge, Kancheepuram at Chengalpattu, (a reference under Section 3(h)(4) filed by the National Highways Authorities) was returned for certain defects in D.No.516/OPBC/2020 dated 28.01.2020.



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14. On consideration of the rival submissions and in the light of the rulings relied on by the learned Counsel for the Revision Petitioner, the order passed by the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, cannot be faulted at this stage. There are valuable points raised in the submission of the learned Counsel for the Respondents, who are the Plaintiffs, before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur. Any dispute after invocation of the National Highways Act shall be referred to the Civil Court of original jurisdiction, meaning the District Court of the District concerned. Further, the contention of the learned Counsel for the Respondents 1 to 6 that the Respondents 1 to 6 herein are the Plaintiffs before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, they had come to know about the land acquisition proceedings from the notification. On verifying the encumbrance certificate, it was found that their mother had sold the property in 1996. When the father dies intestate, the property devolves upon all the legal heirs, by which 1/6th share only the widow is entitled. Whether the sale executed by the wife of Balayya Naidu was valid or not is subject to be decided only during the trial in the suit in O.S.No.225 of 2018. Even though the suit was instituted before the learned District



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Munsif-cum-Judicial Magistrate, Sriperumbudur, now, after hearing both parties, it is found that earlier also, the learned Judge of this Court had in the Writ Petition directed the Authorities to refer the matter to the Civil Court of original jurisdiction meaning the Court under the Highways Act, which is the Principal District Judge, Kancheepuram District at Chengalpattu. Therefore, all the points raised in this case, whether the suit was filed only for the purpose of extracting money or the claim of the Respondents in the Civil Revision Petition who are Plaintiffs in the suit, are bona fide claims. Whether they had knowledge of the sale in the year 1996 or they came to know about the sale only after notification, they ought to be considered only after a thorough trial by letting in evidence by both parties and on appreciation of evidence, which cannot be gone into by this Court. In the light of those developments, it is in the interest of both parties that the subject matter of the dispute raised in O.S.No.225 of 2018 has to be necessarily withdrawn from the Court of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, and transferred to the file of the Civil Court of original jurisdiction under the Highways Act, the learned Principal District Judge, Kancheepuram District at Chengalpattu.



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15. Only after disposal of O.S.No.225 of 2018 and renumbering by the learned Principal District Judge, Kancheepuram District at Chengalpattu, the issue regarding disbursal by the Court to the owners of the property, the amount deposited by the Highways Authorities for disbursal to the landowner share and land loser share, be considered by the learned Principal District Judge, Kancheepuram District at Chengalpattu. Accordingly, the order of the learned Principal District Munsif-cum-Judicial Magistrate, Sriperumbudur passed in I.A.No.216 of 2019 dated 21.12.2020 is to be confirmed. At the same time, holding that the suit filed by the Plaintiffs before the Munsif-cum-Judicial Magistrate, Sriperumbudur, is not maintainable as per the Land Acquisition Act, on the point of law raised in this Civil Revision Petition. Only to render justice to both parties, the suit is withdrawn from the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, and transferred the same to the file of the learned Principal District Judge, Kancheepuram District at Chengalpattu, which will serve the cause of both parties. The plaint is not struck down from the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, the suit is maintainable. The contention of the learned Counsel for the Revision Petitioner that the plaint is to be rejected



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is refused.

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16. In the result, **the Civil Revision Petition is partly allowed.**

Instead of rejecting the plaint, it is withdrawn from the wrong forum and transferred the same to the proper forum for disposal as per law. The points raised by the learned Counsel for the Revision Petitioner that the Plaintiffs have to establish that they are entitled to the share, are to be considered only by letting in evidence during trial and not at this stage in the Civil Revision Petition.

17. In the light of the above developments, the suit in O.S.No.225 of 2018 is withdrawn from the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur, and transferred to the learned Principal District Judge, Kancheepuram District at Chengalpattu, with a direction to dispose it off as early as possible to enable the parties to withdraw the amount already deposited by the Highways Authorities, based on the right to claim if only the right is established. Till such time as the amount deposited by the Highways Authorities may be deposited in a Nationalized Bank by the learned Principal District Judge, Kancheepuram District at



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Chengalpattu, so that it accrues interest. The points already raised, accepting Order VII Rule 11(a) and (d) of CPC, can be considered by the learned Principal District Judge, Kancheepuram at Chengalpattu, on merit, without being influenced by any of the observations made in this order. It is requested that the learned Principal District Judge, Kancheepuram at Chengalpattu, shall consider the suit as an old suit pending from the year 2018. Even though a new number is allotted as per the case on the file of the learned Principal District Judge, Kancheepuram at Chengalpattu, earnest effort shall be taken to disburse the amount to the parties entitled to the compensation. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.04.2023

cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To



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1.The District Munsif-cum-Judicial Magistrate, Sriperumbudur.

2.The Principal District Judge, Chengalpattu.

3.The District Collector,
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Kancheepuram 631 501.

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cda/srm



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**Order made in
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