



W.P. No.35484/2005

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.09.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 35484 OF 2005

Amrutanjan Ltd.

Rep. By its Company Secretary

42/45, Luz Church Road

Mylapore, Chennai – 4.

.. Petitioner

- Vs -

1. The Commissioner
HR & CE Department
Nungambakkam, Chennai – 24.

2. The Deputy Commissioner
Executive Officer
A/m Kapaleeswarar Temple
Mylapore, Chennai – 4.

3. The Secretary to Government
Of Tamil Nadu, HR & CE Department
Fort St. George, Chennai.
(R-3 impleaded as per order dated
9.1.2012 in MP No.7/2012)

.. Respondents



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Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of declaration declaring the proviso to Section 34A (5) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as illegal, ultra vires and unenforceable insofar as the petitioner is concerned.

For Petitioner : Mr.Bhagavath Krishnan

For Respondents : Mr. K.Karthikeyan, GA for R-1
Mr. Arun Karthi Mohan for R-2

ORDER

Challenging the alleged fixation of fair rent as exorbitant and illegal and the non-entertainment of the appeal without deposit of satisfactory proof of deposit of the lease rent as provided u/s 34-A (5) of the Hindu Religious & Charitable Endowments Act (for short 'the Act') the present writ petition has been filed.

2. It is the case of the petitioner that it is a company which is engaged in the manufacture of medicinal preparations, popularly known as 'Amrutanjan'. The petitioner has engaged several workers in its official premises, which belongs to the 2nd respondent. The said premises is rented



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out to the petitioner on the basis of a lease agreement executed between the petitioner and the 2nd respondent and for the purpose of carrying on its business, the petitioner has made several improvements to the structure, worth crores of rupees. The petitioner is paying a sum of Rs.1,400/- per month as rent to the 2nd respondent.

3. It is the further case of the petitioner that out of blue, the 2nd respondent issued a demand notice dated 10.08.2005 demanding a sum of Rs.3,30,882/- as rent per month retrospectively from 1.11.2001 in exercise of the powers conferred u/s 34-A of the Act.

4. It is the further case of the petitioner that the fair rent fixed by the 2nd respondent is exorbitant and has been fixed without giving any opportunity to the petitioner. It is the further averment of the petitioner that the said provision does not empower the Committee to make any retrospective levy. Aggrieved by the said enhancement of rent, the petitioner preferred an appeal to the 1st respondent u/s 34-A (3) of the Act. However, the said appeal was not entertained by the 1st respondent in view of proviso



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to Section 34-A (5), which provides that the appeal shall not be entertained unless it is accompanied by satisfactory proof with regard to deposit of lease rent so fixed.

5. It is the case of the petitioner that the aforesaid proviso mandating deposit of lease rent makes the appeal remedy illusory and, therefore, the said proviso is arbitrary and unconstitutional and, therefore, left with no other efficacious alternative remedy, the petitioner has come before this Court through the present petition challenging the constitutional validity of the proviso to Section 34-A (5) of the Act.

6. Learned counsel appearing for the petitioner submits that the the appeal against the fixation of rent by the temple authorities, being the first recourse to an aggrieved lessee/tenant, no pre-condition for filing such appeal can be levied. Furthermore, it is submitted that the levy cannot be made retrospectively, as it runs to crores of rupees in the form of rent and forcing the petitioner to deposit the rent as a condition precedent for taking up the appeal for consideration hits at the right of the petitioner and makes the



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appeal remedy illusory and nugatory. Learned counsel placed reliance on the decision of the Apex Court in ***Mardia Chemicals – Vs – Union of India (2004 (4) SCC 311)***.

7. It is the further submission of the learned counsel that even otherwise, the fixation of rent at Rs.3,30,282/- per month is highly exorbitant and excessive and the condition of pre-deposit is onerous and by the retrospective levy, the right of the petitioner to prefer an appeal is made impossible and it hits at the right of the petitioner to get a legal remedy.

8. It is the further submission of the learned counsel that the petitioner, though had preferred an appeal u/s 34-A (3) of the Act, however, in view of the proviso to Section 34-A (5), the 1st respondent is powerless to take the appeal as there is no provision for any relaxation that could be granted by the 1st respondent and, therefore, to that extent, the provision restricting the right of the petitioner to file an appeal by taking proper recourse to a legal remedy, the said provision of law is *ultra vires* the Constitution and, hence, deserves to be struck down.



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9. Per contra, learned counsel appearing for the 2nd respondent, placing his submissions on the basis of the counter affidavit, submitted that originally the lease was granted in favour of one P.R.Sundera Iyer for a period of 99 years vide registered lease deed dated 28.8.1901, who assigned the right to the petitioner and therefrom, the petitioner is in possession and enjoyment of the property and was paying a rent of Rs.1,400/-. The lease period expired on 27.8.2000 and the petitioner, though was called upon to pay an enhanced rent at the prevailing rates, however, the petitioner did not come forward to pay the enhanced rent and, therefore, notice dated 17.9.2001 was issued by the 2nd respondent in and by which the tenancy in favour of the petitioner was terminated with effect from 31.10.2001 and the petitioner was directed to vacate and surrender vacant possession of the land on or before 1.11.2001.

10. It is the further submission of the learned counsel that fresh notice was issued on 16.6.2004 terminating the tenancy ending with 31.7.2004 and inspite of the said notice, the petitioner did not vacate the land. A paltry sum of Rs.1,400/- alone is being paid as rent and no amount has been paid by the



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petitioner towards damages and occupation. It is the submission of the learned counsel that the petitioner is only a tenant at sufferance and, therefore, would not be entitled to file appeal u/s 34-A of the Act.

11. It is the further submission of the learned counsel that the rent was enhanced only after the expiry of the earlier lease in August, 2000. It is further submitted that there is no embargo for fixing the enhanced rent retrospectively and that the rent fixation has been properly done by the Committee, which is also in accordance with G.O. No.353, Tamil Culture & HR & CE Department dated 4.6.1999. The petitioner not having paid the enhanced rent and not depositing the said amount even as a pre-condition for hearing the appeal, which is filed by it, cannot seek any indulgence, *moreso*, in the nature of declaration seeking to declare the proviso to Section 34-A (5) as *ultra vires* and, accordingly, seeks for dismissal of the present petition.

12. Learned counsel appearing for the 1st respondent, while concurred with the submissions advanced on behalf of the 2nd respondent, further submitted that the fair rent has been fixed by the Committee only after



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issuing notice to the lessee/tenant mentioning about the quantum of rent to be fixed and after getting reply from the tenant, the order fixing fair rent has been done.

13. It is the further submission of the learned counsel that the precondition of deposit of rent for hearing the appeal provided u/s 34-A (3) is only to safeguard the interests of the temple and *pari materia* provisions are found in the Madras Buildings (Lease & Rent Control) Act, 1960, Tamil Nadu Urban Land Tax Act, 1966 as also the Tamil Nadu General Sales Tax Act, 1959.

14. It is the further submission of the learned counsel that the amount fixed as fair rent in the area under the occupation of the petitioner, which is a very posh and busy area, where the price escalation is high and the land prices and land rentals are also high and that the petitioner has been paying only a paltry sum over several decades. The extent of land under the occupation of the petitioner is to an extent of 14 grounds 910 sq.ft., on the paltry rent of Rs.1,400/- for more than a century and from the date of enhanced rent fixation, the petitioner has not even paid any dime as rent to the temple and,



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therefore, the petitioner having not discharged his side of the bargain by paying the enhanced rent, cannot now come and seek for any declaration that proviso to Section 34-A (5) is *ultra vires* and, accordingly, prays for dismissal of the present petition.

15. In support of the aforesaid submission, learned counsel placed reliance on the decision of the Division Bench of this Court in ***Arulmigu Angala Parameswari & Kasivishwanathaswami Temple, Adimanaivaal House Owners Association – Vs – The State of Tamil Nadu & Ors. (2009 SCC OnLine Mad 423)***.

16. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the parties and perused the materials available on record.

17. There could be no quarrel with the fact that the petitioner is not the original lessee, but only has an assignment from the original lessee, one P.R.Sundera Iyer, who had assigned the lease rights to the petitioner on the



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strength of which the petitioner is continuing in the property and is paying the paltry rent of Rs.1,400/-. Therefore, by no stretch the petitioner could be termed to be a tenant.

18. The whole case of the petitioner hinges on proviso to Section 34-A (5), which according to the petitioner is *ultra vires* as it imposes a burden on the tenant from paying the pre-deposit for the appeal to be heard, in and by which the right of the petitioner is being robbed. For better appreciation, Section 34-A (3), (4), (5) and proviso to Section 34-A (5), are quoted hereunder:-

"34-A Fixation of Lease rent.-

.....

(3) Any person aggrieved by an order passed under sub-section (2) may, within a period of thirty days from the date of receipt of such order, appeal to the Commissioner in such form and in such manner, as may be prescribed.

(4) The Commissioner may, after giving the person aggrieved an opportunity of being heard, pass such order as he thinks fit.

(5) Any person aggrieved by an order passed by the Commissioner under sub-section (4) may, within ninety days



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from the date of receipt of such order, prefer a revision to the High Court :

Provided that no appeal or revision shall be entertained under sub-section (3) or sub-section (5), as the case may be, unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision, as the case may be."

19. From the above provision, as found u/s 34-A (3) as well as 34-A (5) and the proviso attached thereto, it is clear that for the purpose of entertaining the appeal or revision, it is incumbent on the lessee to pre-deposit the lease rent fixed/re-fixed to the religious institution, which lease amount would be given credit to by the religious institution on the basis of the orders that may be passed in the appeal or revision.

20. In the present case, the petitioner, as already stated above, has come in possession of the property through assignment from the lessee, P.R.Sundera Iyer and has been in occupation of the property and paying the rent of Rs.1,400/- for the last 99 years of lease, which expired in August, 2000.



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Thereafter, the 2nd respondent had sought to refix the rent on the basis of the fair rent index prevailing in the locality and had fixed the fair rent at Rs.3,30,832/-.

21. It is the specific case of the 1st respondent that notice would be issued to the lessee before the fair rent committee fixes the fair rent. In the present case, the petitioner is not the lessee, but at best could only be deemed to be a sub-lessee, by means of an assignment from P.R.Sundera Iyer. That being the admitted position, notice is mandated only to the lessee and the sub-lessee cannot seek for any notice with regard to refixation of rent.

22. Even otherwise, the lease has expired in August, 2000 and more than two and a half decades have passed and till now, the petitioner has neither paid the prospective enhanced rent nor made any pre-deposit of the demand of rent before taking up the appeal.

23. It is borne out by record that the petitioner is occupying an extent of about 14 grounds and 910 sq.ft. of land, which belongs to the temple in



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Mylapore, which is in the heart of Chennai city where the rental rate is skyrocketing. Though the petitioner claims that it has put up substantial investment running to crores of rupees over the building, which has been refuted by the respondents, the fact remains that there is not even an iota of evidence to suggest that such building has been put up. Contrarily, it is the stand of the respondents that a shed is put up and the place is used as a godown. Nevertheless, it is to be pointed out that the land cost is of paramount concern, which determines the fixation of rent, as it is only the land, which has been leased out to the lessee. Any superstructure put up by the lessee or any person to whom the lessee has assigned the land, could only be for the period of lease and after termination of the lease, the lessee or the assignee would not have any right over the land and the superstructure. However, inspite of the fact that the lease had expired way back in August, 2000, till date the petitioner in occupation of the lands by paying a paltry rent and not the refixed rent.

24. If really the petitioner is a bona fide person, who is aggrieved, the proper course open to the petitioner would have been to pay the rent fixed



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atleast prospectively while raising concern with regard to retrospective fixation. However, without paying the refixed rent prospectively, the petitioner has challenged the proviso to Section 34-A (5) which provides for pre-deposit of the lease rental amount before the appeal/revision could be taken by the higher forum. It is to be pointed out that the appeal has been filed two decades back, which has not been entertained against which the present petition has been filed in the year 2005 questioning the vires of Section 34-A (5). This clearly shows the intent of the petitioner, who does not want to shell out a penny to the religious institution, but to occupy the lands, which have been endowed to the religious institution.

25. If really the petitioner is a bona fide occupier of the property, the proper course for the petitioner would have been to pay the rent refixed atleast prospectively while knocking on the doors in the appellate stage or even before this Court claiming that retrospective fixation is bad. However, without paying even a penny to the religious institution, the petitioner has taken the religious institution for a ride for more than two and a half decades. This clearly shows the mala fide intent of the petitioner, which is nothing but



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an attempt to deceive the respondents from their rightful share of the enhanced refixed rent for the lands that belong to the religious institution.

26. As rightly pointed out by the respondents, it is not as if the HR & CE Act alone has got a provision u/s 34-A (5), where the proviso provides for pre-deposit of the lease amount before entertainment of the appeal/revision. There are *pari materia* provisions found in the Madras Buildings (Lease & Rent Control) Act, 1960, Tamil Nadu Urban Land Tax Act, 1966 as also the Tamil Nadu General Sales Tax Act, 1959, which have similar provisions. Further, except for making a bald claim that proviso to Section 34-A (5) of the Act is *ultra vires*, the manner in which it is *ultra vires* has not been established by the petitioner. In effect, by playing upon the *vires* of the provision, the petitioner has successfully dragged the case for over two and a half decades and allowing the petitioner to continue any further to drag on the proceedings without paying the rightful rent to the religious institution would be nothing but travesty of justice to the religious institution.



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27. There is nothing on record to indicate that the petitioner has paid the rent since its refixation and without paying the same, the petitioner has been agitating through the writ petition the validity of the proviso to Section 34-A (5). If such a plea, as advanced by the petitioner is to be accepted, that would have a detrimental effect on the properties that are endowed for the benefit of the religious institution as the intent with which such endowment is made would stand defeated. Only to safeguard the interests of the religious institutions and the properties endowed for the benefit of the religious institution, the HR & CE Act has been framed and Section 34-A has been specifically incorporated to make the properties endowed to earn for the sustenance of the religious institution.

28. While the decision in *Mardia Chemical case (supra)* relied on by the petitioner is not applicable to the facts of the present case as in the said case, the Supreme Court has frowned about the imposition of pre-deposit only with regard to initiating the original proceeding. However, in the present case, the pre-deposit is sought to be imposed only at the appeal stage before the 1st respondent.



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29. However, one other aspect, which is more curious in the present case is that while the petitioner has not remitted the pre-deposit as mandated u/s 34-A (5) while filing the appeal, which is put in issue before this Court by challenging the vires of the provision, even in the present case before this Court, the petitioner has not come forward to make the pre-deposit for the purpose of giving any direction for hearing the appeal. The petitioner has not shown any remorse at his attitude in depositing the amount of rent fixed, which is appealed, either in the appellate stage or the revisional stage, which clearly shows that the petitioner is not ready to shell out any amount even as a pre-deposit for hearing its case. The said attitude of the petitioner stares writ large not only on the proceedings, but also on the reason as to why the pre-deposit has been mandated under the aforesaid provision.

30. The decision in *Arulmigh Angala Parameswari & Kasiviswanathaswami Temple case (supra)* relied on by the respondents squarely applies to the present case, where the Division Bench had occasion to deal with Section 34-A and in that context, the Division Bench held thus :-



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“18. Plea Regarding Pre Deposit: - Mardia Chemicals is strongly relied upon by the Learned Counsel for the petitioner to show that the condition relating to pre deposit is bad. In Mardia Chemicals, the condition of pre-deposit for filing the proceedings under Section 17 of the Act was found to be onerous by the Supreme Court which held that though Section 17 is termed as "appellate proceedings", it is in fact an initial action brought before a forum for any action or measures taken by a party. The Supreme Court observed that "It is the stage of initial proceeding like filing a suit in civil court". It was further held as follows:-

“60. The requirement of pre-deposit of any amount at the first instance of proceedings is not to be found in any of the decisions cited on behalf of the respondent. All these cases relate to appeals. The amount of deposit of 75% of the demand, at the initial proceeding itself sounds unreasonable and oppressive, more particularly when the secured assets/the management thereof along with the right to transfer such interest has been taken over by the secured creditor or in some cases property is also sold. Requirement of deposit of such a heavy amount on the basis of a one-sided claim alone, cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute. Merely giving power to the Tribunal to waive or reduce the amount, does not cure the



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inherent infirmity leaning one-sidedly in favour of the party, who, so far has alone been the party to decide the amount and the fact of default and classifying the dues as NPAs without participation/association of the borrower in the process. Such an onerous and oppressive condition should not be left operative in expectation of reasonable exercise of discretion by the authority concerned. Placed in a situation as indicated above, where it may not be possible for the borrower to raise any amount to make the deposit, his secured assets having already been taken possession of or sold, such a rider to approach the Tribunal at the first instance of proceedings, captioned as appeal, renders the remedy illusory and nugatory.

The Supreme Court further held as follows:-

62. As indicated earlier, the position of the appeal under Section 17 of the Act is like that of a suit in the court of the first instance under the Code of Civil Procedure. No doubt, in suits also it is permissible, in given facts and circumstances and under the provisions of the law to attach the property before a decree is passed or to appoint a receiver and to make a provision by way of interim measure in respect of the property in suit. But for obtaining such orders a case for the same is to be made out in accordance with the



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relevant provisions under the law. There is no such provision under the Act.

63.....

64 . *The condition of pre-deposit in the present case is bad rendering the remedy illusory on the grounds that: (i) it is imposed while approaching the adjudicating authority of the first instance, not in appeal, (ii) there is no determination of the amount due as yet, (iii) the secured assets or their management with transferable interest is already taken over and under control of the secured creditor, (iv) no special reason for double security in respect of an amount yet to be determined and settled, (v) 75% of the amount claimed by no means would be a meagre amount, and (vi) it will leave the borrower in a position where it would not be possible for him to raise any funds to make deposit of 75% of the undetermined demand. Such conditions are not alone onerous and oppressive but also unreasonable and arbitrary. Therefore, in our view, sub-section (2) of Section 17 of the Act is unreasonable, arbitrary and violative of Article 14 of the Constitution."*

19. *So in Mardia Chemicals case, the Supreme Court quashed the condition of predeposit of 75% because such a condition was imposed for initiating the original proceedings under Section 17. In the present case, the requirement of pre-*



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deposit laid down in sub section (5) of Section 34 A is for filing revision or appeal. There is a determination of lease under Section 2 of Section 34 A of the Act and it is only in the appeal proceedings, this pre-deposit is required.

20 . The Supreme Court in Mardia Chemical's Case drew the difference between an original and an appellate proceedings by referring to Ganga Bai v. Vijay Kumar - MANU/SC/0020/1974 : (1974) 2 SCC 393. The right to file a suit is different from the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever, frivolous to claim, that the law confers no such right to sue.

21. Appeal is a creature of statute and the authorities are entitled to laid down the conditions subject to which, the appeal will be entertained. There are many enactments which require pre-deposit as a condition for filing appeal, particularly, tax enactments. In Vijay Prakash D. Mehta v. Collector Of Customs - (1989) 72 STC 324 and in several other decisions, the Supreme Court has held that the right of appeal can be subjected to certain conditions:-

"The case of the appellants was that they had not gone out of India and had no assets in India. Their passports were impounded at the time of arrest. Their visa had lapsed and could not be renewed. They had no money, hence, the right of appeal could be illusory



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unless they are permitted to deposit only Rs.60,000 each which they contend they are able to procure with the assistance of their father.”

.....

“..... In the instant case the only substantive right is the right of appeal as contemplated under Sections 129A and 129E of the Act and that right is a conditional one and the legislature in its wisdom has imposed that condition. No question of whittling down that right by an alteration of procedure arises in this case.

Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant.”

.....

“It is not the law that adjudication by itself following the rules of natural justice would be violative of any right- constitutional or statutory without any right of appeal, as such. If the statute gives a right to appeal upon certain conditions, it is upon fulfilment of those conditions that the right becomes vested and exercisable to the appellant.....”



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*For the reasons stated above, the condition
requiring pre-deposit is upheld.”*

(Emphasis Supplied)

31. When the Act has provided for pre-deposit of the rent, which has been fixed/refixed for the purpose of entertainment of appeal/revision, without it being shown to be *ultra vires* the Constitution, merely because the petitioner would have to pay a large amount would not be a ground to negate the right of the religious institution to its rightful share of rent. The Fair Rent Committee, considering all the factors, including the place where the property is situate and also the extent of lands, which have been given on lease, which has since stood terminated, has fixed the rent, which does not suffer the vice of illegality, arbitrariness or perversity and the same cannot be said to be *ultra vires* the Constitution.

32. During the course of arguments, it was submitted on behalf of the respondents that the petitioner has been evicted from the premises and the 2nd respondent has taken over possession of the lands. The same is taken on record.



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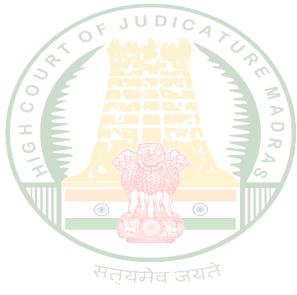
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34. For all the reasons aforesaid, this writ petition fails and the same is dismissed. The petitioner, it is informed has been evicted from the premises. However, if the eviction has not been done till date, the respondents are directed to take necessary steps to evict the petitioner from the property and the respondents are also directed to take steps to recover the rent fixed by the Fair Rent Committee, including the arrears, within a period of four weeks from the date of receipt of a copy of this order, if the same has not been paid. There shall be no order as to costs.

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1. The Commissioner
HR & CE Department
Nungambakkam, Chennai – 24.
2. The Deputy Commissioner
Executive Officer
A/m Kapaleeswarar Temple
Mylapore, Chennai – 4.
3. The Secretary to Government
Of Tamil Nadu, HR & CE Department
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