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W.P. Nos.17541, 19502 and 20066 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

W.P. Nos.17541, 19502 and 20066 of 2021
and
W.M.P. Nos.18644, 20796 and 21318 of 2021

S. Abdul Khader
S. Prabu
Ramachandran

Petitioner in WP No.17541/2021
Petitioner in WP No.19502/2021
Petitioner in WP No.20066/2021

VS.

1. The Commissioner
Villupuram Municipality
Villupuram
2. The Municipal Engineer
Villupuram Municipality
Villupuram
3. The Assistant Engineer
TANGEDCO
Villupuram
4. S.S. Rajendran

Respondents in all WPs



W.P. Nos.17541, 19502 and 20066 of 2021

Prayer in W.P.No.17541 of 2021:

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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings in Na.Ka.No.9905/2021/F1 dated 03.08.2021 received by the petitioner on 11.08.2021 and quash the same and thereby, forbear the respondents from interfering with the petitioner's property in Door No.4, Town Survey Nos.79 and 83 and Old Town Survey Nos.12/10 and 12/11 in Ward – A, Block – 18 presently Block No.82.

Prayer in W.P.No.19502 of 2021:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings in Na.Ka.No.9905/2021/F1 dated 03.08.2021 received by the petitioner on 11.08.2021 and quash the same and thereby, forbear the respondents from interfering with the petitioner's property in Door No.7, Town Survey Nos.79 and 83 and Old Town Survey No.12/11 in Ward – A, Block – 18 presently Block No.78.

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W.P. Nos.17541, 19502 and 20066 of 2021

Prayer in W.P.No.20066 of 2021:

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Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings in Na.Ka.No.9905/2021/F1 dated 03.08.2021 received by the petitioner on 11.08.2021 and quash the same and thereby, forbear the respondents from interfering with the petitioner's property in Door No.6, Town Survey Nos.79 and 83 and Old Town Survey No.12/11 in Ward – A, Block – 18 presently Block No.78.

For petitioner in all WPs	Mr. N. Suresh
For RR 1 & 2 in WP No. 17541 of 2021	Mr. P. Srinivas Standing Counsel
For RR 1 & 2 in W.P. Nos. 19502 & 20066 of 2021	Mr. D. Ravichander for Mr. K. Mohammed Hydher Ali
For R3 in all WPs	Mr. V. Venkata Seshaiya Standing Counsel
For R4 in all WPs	Mr. S. Sathish



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W.P. Nos.17541, 19502 and 20066 of 2021

COMMON ORDER

[made by M. SUNDAR, J.]

This common order will govern the captioned three main 'writ petitions' (hereinafter 'WPs' for the sake of brevity) and the captioned 'writ miscellaneous petitions' (hereinafter 'WMPs' for the sake of brevity) thereat.

2. In the captioned main WPs, three separate notices but all dated 03.08.2021 and all bearing reference ந.க.எண் 9905/2021/எப்1 (hereinafter 'impugned notices' for the sake of convenience and clarity) have been assailed by the three writ petitioners. A scanned reproduction of one of the impugned notices *i.e.*, impugned notice in W.P.No.17541 of 2021 (S. Abdul Khader-writ petitioner) is as follows:



W.P. Nos.17541, 19502 and 20066 of 2021

விழுப்புரம் நகராட்சி

ந.க.எண். 9905 /2021/எப்1

நாள். 03/08/2021
விழுப்புரம் நகராட்சி.

உடைமைகளை அபுபுறப்படுத்தும்படி பிறப்பிக்கப்படுகின்ற அறிவிப்பு

- பொருள் - ஆக்கிரமிப்பு - விழுப்புரம் நகராட்சி - (அங்கீகரிக்கப்பட்ட) முத்துவேல் லே - அலுட் மனைப்பிரிவில் உள்ள சிறுவர் பள்ளி மற்றும் விளையாடுமிடம் என ஒதுக்கீடு செய்யப்பட்டுள்ள இடத்தில் கட்டிடம் கட்டியது - உடைமைகளை அபுபுறப்படுத்துதல் - தொடர்பாக.
- பார்வை 1. மாண்புமிகு சென்னை உயர் நீதிமன்ற SA No.645 to 659/1992 & 677/92, 774/92, 775 of 1992-ன், 11.07.2002 தேதிய உத்திரவு
2. இவ்வலுவலக அறிவிப்பு ந.க.எண்.9905/2019/எப்1, நாள்.16.10.2020
3. மாண்புமிகு சென்னை உயர் நீதிமன்ற வழக்கு WP.No.16011/2021 - ன் விசாரணை நாள்.03.08.2021

விழுப்புரம் நகராட்சி எல்லைக்குட்பட்ட வார்டு-A, பிளாக் எண்.82, நகரளவு எண்.79,83-ல் அங்கீகரிக்கப்பட்ட முத்துவேல் லே அலுட் மனைப்பிரிவில் உள்ள சிறுவர் பள்ளி (ம) விளையாடும் இடத்தில் சுமார் 267 m² பரப்பளவு இடத்தை சட்டத்திற்கு புறம்பாக கிரையம் பெற்று குடியிருப்பு கட்டிடம் கட்டி ஆக்கிரமிப்பு செய்துள்ளதை அகற்ற பார்வை 2-ல் காணும் இவ்வலுவலக அறிவிப்பில் தெரிவிக்கப்பட்டது. தாங்கள் இதுவரை ஆக்கிரமிப்பு கட்டிடத்தினை அகற்றவில்லை.

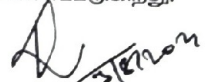
எனவே மேற்படி கட்டிடத்தை அகற்ற வேண்டியுள்ளதால், இவ்வறிவிப்பு கிடைக்கப்பெற்ற 15 தினங்களுக்குள் தங்களுடைய உடைமைகளை அபுபுறப்படுத்துமாறு இதன் மூலம் அறிவிக்கப்படுகிறது. தவறும்பட்சத்தில், தமிழ்நாடு மாவட்ட நகராட்சிகளின் சட்டம் 1920, பிரிவு 362 -ன்படி பொது உபயோக பயன்பாட்டில் உள்ள ஆக்கிரமிப்புகளை நகராட்சி பணியாளர்களை கொண்டு அபுபுறப்படுத்தப்படுவதுடன், அதற்குண்டான சகல செலவினங்களையும் தங்களிடமிருந்து வசூலிக்கப்படும் என அறிவிக்கப்படுகிறது.

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பெறுநர்

திரு. காதர்,
முத்துவேல் லே அலுட்,
கே.கே.ரோடு, விழுப்புரம்.

நகல்: நகராட்சி பொறியாளர், விழுப்புரம் நகராட்சி, குடிநீர் இணைப்பு மற்றும் பாதாள சாக்கடை இணைப்பு துண்டிப்பு செய்ய தக்க நடவடிக்கைக்கு.
நகல்: உதவி பொறியாளர், தமிழ்நாடு மின் உற்பத்தி மற்றும் பகிர்மான கழகம், மின் இணைப்பு துண்டிப்பு செய்ய தக்க நடவடிக்கைக்காக.


ஆணையாளர்,
விழுப்புரம் நகராட்சி
31.8.2021



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3. Mr. N. Suresh, learned counsel for writ petitioners in all WPs, Mr. P. Srinivas, learned counsel for RR 1 and 2 (Standing Counsel for Villupuram Municipality in W.P.No.17541 of 201), Mr.D.Ravichander, learned counsel representing Mr. K. Mohammed Hydher Ali, learned Standing Counsel for Villupuram Municipality in W.P. Nos.19502 and 20066 of 2021, Mr.V. Venkata Seshaiya, learned Standing Counsel for R3 (TANGEDCO) in all WPs and Mr.S.Sathish, learned counsel for R4 in all WPs, are before us.

4. This Court heard all the aforesaid counsel.

5. Learned Standing Counsel for Villupuram Municipality, submitted that the impugned notices can be construed to be notices issued under Section 362 of 'the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920)' [hereinafter 'the District Municipalities Act' for the sake of brevity], though the impugned notices only talk about consequences under Section 362, if alleged encroachment is not removed within 15 days.



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6. Notwithstanding very many averments in the writ affidavit, learned counsel for writ petitioners predicated his campaign against the impugned notices on one point and that one point is, the writ petitioners have not been show caused.

7. Learned Standing Counsel for Villupuram Municipality submits that the impugned notices can now be treated as 'show cause notices' [hereinafter 'SCNs' for the sake of convenience and clarity].

8. Learned counsel for R4 [private respondent] submits that if the impugned notices are treated as SCNs today, a time frame may please be fixed for the writ petitioners / noticees to respond.

9. This Court has no difficulty in accepting the proposal to consider the impugned notices as SCNs as that would only mean that the writ petitioners are given an opportunity to respond and put forth their say *qua* alleged encroachments but before we do that and write the operative portion of this order, we deem it appropriate to capture the obtaining legal position for the sake of convenience and clarity *qua* all concerned.



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10. 'The Tamil Nadu Urban Local Bodies Act, 1998 (Act 9 of 1999)' [hereinafter 'the TNULB Act' for the sake of brevity] is a conditional legislation *vide* sub-section (3) of Section 1 of TNULB Act, which is dated 04.05.1999, but originally kicked in (came into force) on 01.08.2000, suspended immediately thereafter, *i.e.*, on 23.08.2000 and resuscitated on 13.04.2023 *vide* notification.

11. In and *vide* Section 200 of the TNULB Act captioned 'Repeal and saving' [to be precise *vide* Section 200(1)(b)], the District Municipalities Act stood repealed but *vide* clause (e) of sub-section 3 of Section 200 of the TNULB Act, all things done, made, instituted, executed, appointed, *etc.* by Municipalities before the commencement of the TNULB Act, *i.e.*, prior to kicking in of the TNULB Act, stand saved and they are to be construed as things done, made, instituted, executed, appointed, *etc.* under the provisions of the TNULB Act.

12. Section 200(3)(e) of the TNULB Act has been amended *vide* Act 25 of 2024 which came into force on and from 06.01.2025. The effect of the amendment is, the term 'Municipalities' occurring in Section 200 (3)(e) has been substituted with the expression 'Municipal



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Councils'. Therefore, Section 200 (3)(e) of the TNULB Act as of today reads as follows:

'Section 200 (3)(e)

200. Repeal and Saving.- (1) The following Acts are hereby repealed, namely:-

(1).....

(2)

(3) Notwithstanding such repeal.-

(a)

(b)

(c)

(d)

(e) all things done, made, instituted, executed and appointed by the municipal corporations, **Municipal Councils**, town panchayats under the relevant Acts referred to in sub-section (1) before the [commencement of the Tamil Nadu Urban Local Bodies (Amendment) Act, 2022] shall be deemed to have been done, made, instituted, executed or appointed, as the case may be, by the municipal corporations, **Municipal Councils** and town panchayats deemed to have been constituted under the provisions of this Act.'

(highlighting made by us in bold letters denotes amendment made)

13. This takes us to the definition of the expressions 'Municipal Council' and 'Municipality' *vide* Section 3 (12-C) and Section 3 (12-D)



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respectively of the District Municipalities Act and the same read as follows:

'(12-C) "Municipal Council' means the Council of the Third Grade Municipality, Town Panchayat or the Municipality as the case may be;'

'(12-D) 'Municipality' means an institution of self-Government constituted for a smaller urban area as defined in clause (2) of Article 243-Q of the Constitution;'

14. Adverting to the aforesaid definitions, learned Standing Counsel for Villupuram Municipality, submitted that the Commissioner of Villupuram Municipality has issued the impugned notices on behalf of the Municipal Council pursuant to resolution of Municipal Council and therefore, the impugned notices have, for all practical purposes, been issued by the Municipal Council. In this view of the matter, impugned notices are saved but we shall be writing that the same shall now be treated as SCNs.

15. It is also necessary to record that the learned Standing Counsel for Villupuram Municipality made a faint attempt to submit that the impugned notices have been issued pursuant to common



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judgment dated 11.07.2002 in S.A. Nos.645 to 659, 677, 774 and 775 of 1992. According to learned Standing Counsel, lands which are subject matter of impugned notices vest in the Municipality as per this common judgment. If that be so, it is open to the Municipality to launch an execution petition (subject, of course, to limitation and other requirements), if so advised and so desired. To put it differently, if an execution petition is launched, the Executing Court shall deal with the same on its own merits and in accordance with law untrammelled by this order. We are informed that the suits which culminated in second appeals are for declaration of title and permanent injunction for removal of alleged encroachments. We express no opinion on this aspect of the matter but we only record the stated position of the Standing Counsel that the parties stand governed by 11.07.2002 common judgment in aforereferred second appeals, subject to limitation.

16. As regards the TNULB Act, it is submitted by learned Standing Counsel that the provision akin to Section 362 of the District Municipalities Act is, Section 128 of the TNULB Act which reads as follows:



W.P. Nos.17541, 19502 and 20066 of 2021

'128. Power to remove encroachment from public place. -

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(1) The Commissioner may, -

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching street or public place or the [land belonging to or vested with the municipality] with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching the street or public place or the [land belonging to municipality or vested with the municipality] within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of seven days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street or any [land belonging to or vested with the municipality] within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to [fifty thousand rupees]:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'



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17. Section 128 of the TNULB Act also has been amended

by Amendment Act 25 of 2024 with effect from 06.01.2025 and

the amended Section 128 reads as follows:

'128. Power to remove encroachment from public place. -

(1) The Commissioner may, -

(a) remove without any notice any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching **street, public place, water body, tank, other water resources or any land** belonging to or vested with the municipality with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching **street, public place, water body, tank, other water resources or any land** belonging to municipality or vested with the municipality within the municipal limit, after issuing a show cause notice for such removal, returnable within a period of **fifteen days** from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

(2) Whoever makes any encroachment in any land or space (not being private property) in **any public street, water body, tank, other water resources or any land** belonging to or vested with the municipality within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to [fifty thousand rupees]:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year.'

(highlighting made by us in bold letters denotes amendment made)



W.P. Nos.17541, 19502 and 20066 of 2021

18. This Court, having set out and captured the statutory provisions as obtaining today, now proceeds to write the operative portion of the instant common order which is as follows:

- i. Impugned notices being notices dated 03.08.2021 bearing reference ந.க.எண் 9905/2021/எப்1 addressed to each of the writ petitioners shall be treated as SCNs from today;
- ii. As impugned notices are being treated as SCNs from today, each of the writ petitioners can send a representation in response to the SCNs (if so advised and so desired) within 15 days from today *i.e.*, on or before 01.04.2025;
- iii. It is open to R4 (private respondent) also to send a representation within the aforementioned 15 days timeline;
- iv. If no representation is received, both from the writ petitioners and R4 within the aforementioned timeline, R1 (Commissioner, Villupuram Municipality) can proceed to pass 'final orders' under proviso to Section 128(1)(b) of the TNULB Act;
- v. Though obvious, we make it clear that if representations are/is received from either writ petitioners or R4 and if representations are received from both, *i.e.*, writ petitioners and R4, the representation/s shall be



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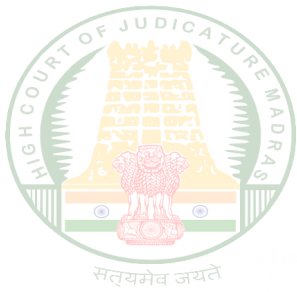


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considered on its/their own merits and in accordance with law and 'final orders' shall be passed by R1 under proviso to Section 128(1)(b) of the TNULB Act;

- vi. The orders passed by R1 in the aforesaid manner shall be duly served on the writ petitioners as well as R4 under due acknowledgment within five working days from the date of the orders; and
- vii. Coercive action, if any, *qua* lands which are subject matter of the impugned notices, shall be subject to and depending on final orders to be made by R1 under proviso to Section 128(1)(b);

19. One more aspect of the matter is, a Hon'ble Predecessor Division Bench, in and *vide* proceedings dated 03.09.2021, has directed that W.P.Nos.18480, 18482, 18484 and 18489 of 2021 connected to this batch be posted along with W.P.No.16011 of 2021. We went into the official website of this Court and found that W.P.No.16011 of 2021 and the writ miscellaneous petition thereat have been dismissed by another Hon'ble Division Bench on 06.09.2021 on the ground that they have become infructuous. A scanned reproduction of the 06.09.2021 order is as follows:



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W.P. No.16011 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P. No.16011 of 2021
and
WMP.No.16929 of 2021

S.S.Rajendran

.. Petitioner

Versus

1. The District Collector,
Villupuram District.
2. The Revenue Divisional Officer,
Villupuram, Villupuram District.
3. The Tahsildar,
Villupuram, Villupuram District.
4. The Commissioner,
Villupuram Municipality,
Villupuram, Villupuram District.
5. The Regional Director,
Municipal Administration,
50, Sarathi Nagar, Kagithapatrai,
Vellore – 632012.
6. Sundari
7. Jothi
8. Ramachandran
9. Sundar

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10. Viswanathan
11. A.R. Madhavan
12. Babu
13. Radhakrishnan
14. Khader
15. Thangasekar

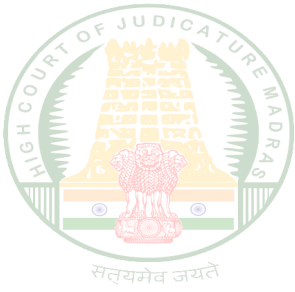
.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the respondent Nos.1 to 5 to consider the representation dated 28.11.2019 made by the petitioner herein to remove the encroachments made by the respondent Nos.6 to 12 at reserved area of Children's School and Playground in Muthuvel Layout, T.S.No.79 and 83 to the extent of 57 cents at Ward A, Block 82, Muthuvel Layout, K.K.Road, Villupuram, Villupuram District and pass appropriate orders within stipulated time period as may be fixed by this Court.

For petitioner : Mr.S.Sathish
For respondents
for RR1 to 5 : Mr.D.Ravichander
for R8 to R11, 13, 14 : Mr.N.Suresh
for R15 : Mr.P.Murali
for R7 : No Appearance
for R6 : Notice pending
for R12 : Died

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W.P. No.16011 of 2021

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ORDER

(The Order of the Court was made by K.KALYANASUNDARAM, J)

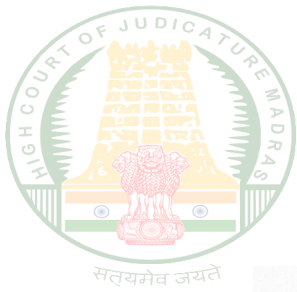
The Writ Petition is heard through video conferencing.

2. The petitioner has come forward with this writ petition seeking issuance of a Writ of Mandamus, directing the respondents 1 to 5 to remove the encroachments made by the respondents 6 to 12 based on his representation dated 28.11.2019.

3. Heard the learned counsels appearing on either side and perused the materials available on record.

4. Mr.D.Ravichander, learned Government Counsel appearing for the respondents 1 to 5 would state that based on the representation of the petitioner, the fourth respondent issued an order of demolition. Challenging the same, a batch of Writ Petition W.P.No.17541 of 2021, etc., have been filed and an interim order has also been issued.

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5. In the light of the submissions of the learned State Government Counsel, we are of the considered opinion that the prayer sought for in this Writ Petition has become infructuous. Accordingly, the Writ Petition is dismissed as having become infructuous. No costs. Consequently, connected miscellaneous petition is closed.

[M.K.K.S., J] [V.S.G., J]
06.09.2021

Speaking order: Yes/No
Index : Yes/No
pvs

To

1. The District Collector,
Villupuram District.
2. The Revenue Divisional Officer,
Villupuram, Villupuram District.
3. The Tahsildar,
Villupuram, Villupuram District.
4. The Commissioner,
Villupuram Municipality,
Villupuram, Villupuram District.
5. The Regional Director,
Municipal Administration,
50, Sarathi Nagar, Kagithapatrai,
Vellore – 632012.

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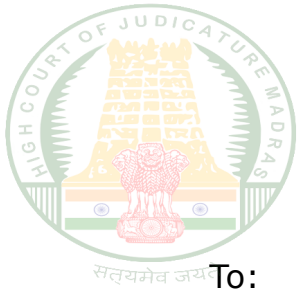
W.P. Nos.17541, 19502 and 20066 of 2021

WEB COPY

20. Captioned three WPs are disposed of in the aforesaid manner. In the light of orders passed in the main WPs, interim orders in the captioned writ miscellaneous petitions are effaced and the writ miscellaneous petitions are disposed of as closed. There shall be no order as to costs.

(M.S., J.) (K.G.T., J.)
18.03.2025

cad



W.P. Nos.17541, 19502 and 20066 of 2021

To:

WEB COPY

1. The Commissioner
Villupuram Municipality
Villupuram
2. The Municipal Engineer
Villupuram Municipality
Villupuram
3. The Assistant Engineer
TANGEDCO
Villupuram



WEB COPY



W.P. Nos.17541, 19502 and 20066 of 2021

M.SUNDAR, J.

and

K. GOVINDARAJAN THILAKAVADI, J.

cad

Common order in
W.P. Nos.17541, 19502 and 20066 of 2021

18.03.2025

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