

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reservation of the Order/Judgment	Pronouncement
30.12.2015	30.12.2015

CORAM

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM
AND
THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

WP.Nos.41106 & 41107/2015 & MP.Nos.1&1/2015

K.R.Ramaswamy alias
Traffic Ramaswamy ... Petitioner in WP.No.41106/2015

Satta Panchayat Iyakkam [SPI]
rep. by its President, No.31,
South West Boag Road,
Thiyagaraya Nagar,
Chennai 600 017. ... Petitioner in WP.No.41107/2015

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.

2. The Secretary,
To His Excellency the Governor of Tamilnadu,
Governor Secretariat,
Raj Bhavan,
Chennai.

3. The Chief Secretary,
Government of Tamilnadu,
Secretariat, Chennai - 9.

4. The Secretary to Government,
Housing and Urban Development Department,
Government of Tamilnadu,
Secretariat, Chennai - 9.

5. Tamilnadu Housing Board,
Rep. By its Chairman,
Nandanam, Chennai.

6. The Secretary to Government,
Department of Health Services,
Government of Tamilnadu,
Secretariat, Chennai - 9.

7. The Secretary,
Medical Council of India,
Pocket - 14,
Sector - 8,
Dwarka, New Delhi - 110 077.

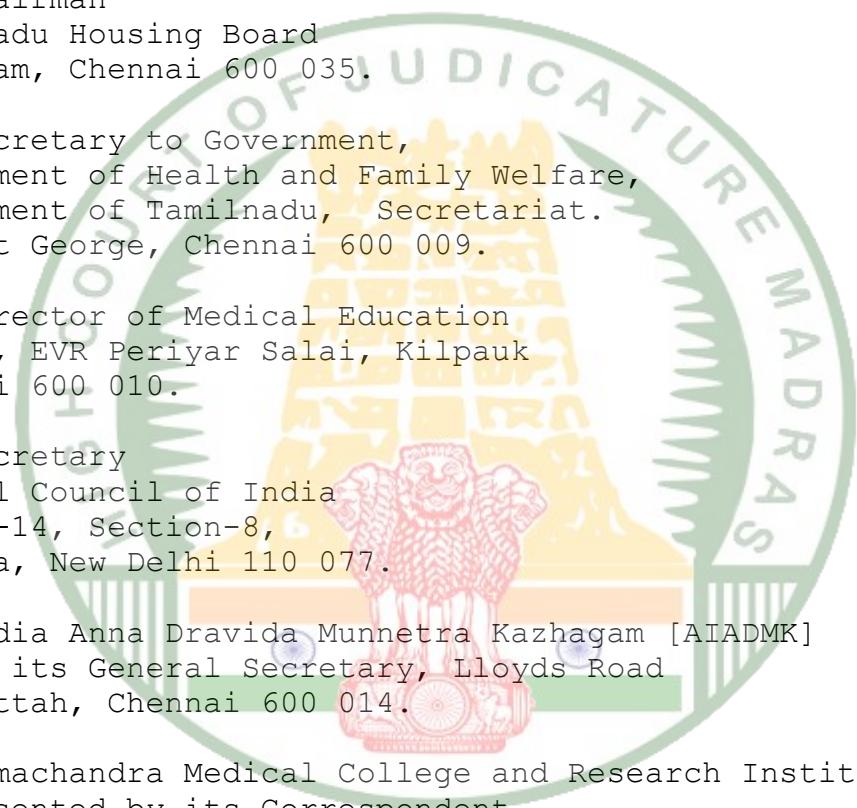
8. The Chairman,
Ethics Committee,
Medical Council of India,
Pocket - 14,
Sector - 8,
Dwarka, New Delhi - 110 077.

9. The Director of Medical Education,
No.162, EVR Periyar Salai,
Kilpauk, Chennai - 600 010.

10. All India Anna Dravida Munetra Kazhagam (AIADMK),
Represented by
Selvi J.Jayalalithaa,
General Secretary,
Avvai Shanmugam Salai, Chennai.

11. Sri Ramachandra Medical College and Research Institute,
Represented by its Chairman,
No.24, Dr.Vasudevan Nagar, Tiruvanmiyur,
Chennai. ... Respondents in WP.No.41106/2015

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.



2. The Chief Secretary,
Government of Tamilnadu,
Fort St George,
Secretariat, Chennai - 9.
3. The Principal Secretary to Government
Housing & Urban Development Department
Government of Tamil Nadu, Fort St George
Chennai 600 009.
4. The Chairman
Tamilnadu Housing Board
Nandanam, Chennai 600 035.
5. The Secretary to Government,
Department of Health and Family Welfare,
Government of Tamilnadu, Secretariat.
Fort St George, Chennai 600 009.
6. The Director of Medical Education
NO.162, EVR Periyar Salai, Kilpauk
Chennai 600 010.
7. The Secretary
Medical Council of India
Pocket-14, Section-8,
Dwaraka, New Delhi 110 077.
8. All India Anna Dravida Munnetra Kazhagam [AIADMK]
rep. by its General Secretary, Lloyds Road
Royapettah, Chennai 600 014.
9. Sri Ramachandra Medical College and Research Institute,
Represented by its Correspondent,
No.24, Dr.Vasudevan Nagar, Tiruvanmiyur,
Chennai. ... Respondents in WP.No.41107/2015

Prayer in WP.No.41106/2015:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the respondents 1 to 8 from allowing the 10th respondent to hold its General body meeting in the premises of the 11th respondent situated at Sri Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041.

Prayer in WP.No.41107/2015:- Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 to 6 not to allow the 8th respondent political party AIADMK to conduct its General Body Meeting at Sri Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041 belonging to the 9th respondent on 31.12.2015 or on any other date and consequentailly direct the 1st respondent to take action against 8th respondent by de-recognizing it and also prohibiting from contesting in any elections and also direct the respondents 2 to 6 to take action against the 9th respondent in accordance with law in this regard within a reasonable time to be fixed by this Court.

For Petitioner in WP.No.41106/2015 : Mr.K.R.Ramaswamy
Party-in-person

For Petitioner in WP.No.41107/2015 : Mr.T.Sivagnansambandam

For RR 2 to 4 & 6 & 9 in WP.No.41106/2015 and
For RR 2,3,5 & 6 : Mr.A.L.Somayaji,
Advocate General assisted by
Mr.S.T.S.Moorthy, Govt.Pleader
Mr.T.N.Rajagopalan, Spl.GP
Mr.A.Kumar, Spl.GP
Mr.R.Vijayakumar, AGP

For R5 in WP.No.41106/15 & R4 in WP.41107/15 : Mr.V.Anandamurthy

COMMON ORDER

[Order of the Court was made by S.VAIDYANATHAN, J.]

Since the issue involved in the above writ petitions is one and the same, both the writ petitions are taken up for final disposal and is being disposed of by the following common order.

2. The prayer in the writ petition filed by Mr.K.R.Ramaswamy @ Traffic Ramaswamy in WP.No.41106/2015 is for issuance of a writ of mandamus to forbear the respondents 1 to 8 from allowing the 10th respondent to hold its General body meeting in the premises of the 11th respondent situated at Sri

Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041.

3. The prayer in the writ petition filed by the Satta Panchayat Iyakkam in WP.No.41107/2015 is three fold, viz.,

[a]for issuance of a writ of mandamus directing the respondents 1 to 6 not to allow the 8th respondent political party AIADMK to conduct its General Body Meeting at Sri Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041 belonging to the 9th respondent on 31.12.2015 or on any other date ;

[b]to direct the 1st respondent to take action against 8th respondent by de-recognizing it and also prohibiting from contesting in any elections ; and

[c]also to direct the respondents 2 to 6 to take action against the 9th respondent in accordance with law in this regard within a reasonable time to be fixed by this Court.

4. Before considering the arguments advanced by the respective counsel on either side, it is appropriate to state that the main object for filing the present writ petitions in the form of Public Interest Litigation is to prevent the conduction of the General Body Meeting and the Executive Council Meeting by the ruling party, viz., the All India Anna Dravida Munnetra Kazhagam, by its General Secretary to be held on 31.12.2015 [tomorrow] at Sri Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041.

5. The arguments advanced by the Party-in-person [WP.No.41106/2015] ; the learned counsel for the petitioner in WP.No.41107/2015 and the learned Advocate General appearing for the State are as follows:-

ARGUMENTS ADVANCED BY MR.K.R.RAMASWAMY @ TRAFFIC RAMASWAMY [PARTY-IN-PERSON] :-

The petitioner raised three contentions, viz.,

- The General Body Meeting to be convened by the All India Anna Dravida Munnetra Kazhagam on 31.12.2015 is a political meeting and that the venue selected for holding such a meeting is an Educational Institution.
- The Banners and Flexboards/Hoardings illegally erected in this regard are causing public inconvenience and the parking places are being utilised by the party persons causing hindrance.

- The representation dated 29.12.2015 sent by him to the authorities concerned, is yet to be considered.

It is also submitted by the petitioner/party-in-person that he has obtained favourable orders from this Court in these kind of matters and due to paucity of time, he could not file the same before this Court today to substantiate his contentions.

ARGUMENTS ADVANCED BY MR.T.SIVAGNANASAMBANDAM:-

Concurring with the contentions made by Mr.K.R.Ramaswamy, the learned counsel made the following submissions by referring to the typed set of papers:-

- The announcement of conducting the said Meeting was made on 28.12.2015 and the same was reported in various Dailies on the next day, i.e., 29.12.2015.
- The said land, viz., 7.44 acres of land was sold by the Tamil Nadu Housing Board to Sri Ramachandra Medical College and Research Institute during the year 2014 for a paltry amount and therefore, the said land cannot be utilised for anything other than for public purpose or for political purpose.
- He also relied on Clause 3 of the Sale Deed dated 15.07.2014 executed by the Tamil Nadu Housing Board in favour of Sri Ramachandra Educational and Health Trust, Chennai-18, wherein it has been specifically stated that the "purchaser covenants with the vendor that the purchaser shall use the property hereby conveyed only for the purpose for which it was allotted, i.e., public purpose/Institutional use Zone."
- The learned counsel referred to Frequently Asked Questions, in particular, Question No.62 of the Model Code of Conduct for the Guidance of Political Parties and Candidates and submitted that the use of educational institutions including their grounds [whether Government Aided, Private or Government] for political campaigns and rallies is not allowed.
- The parking places have been blocked by the ruling party from 29.12.2015 causing hindrance to the general public and that the traffic in the said area has been affected badly.

ARGUMENTS ADVANCED BY MR.A.L.SOMAYAJI:-

Refuting and resisting the contentions raised by the petitioner/party-in-person in WP.No.41106/2015 and the learned counsel for the petition in WP.No.41107/2015, the learned Advocate General has made the following submissions:-

- The Model Code of Conduct comes into force only when the election notification is issued and will be in force till the elections are complete and as on today, there is no notification specifying the date of election and hence, the contention raised on the petitioners side based on the Model Code of Conduct coupled with the Frequently Asked Questions cannot be sustained.
- With regard to the second fold of prayer in WP.No.41107/2015, viz., to de-recognise the particular Political Party and to prohibit the said party from contesting in any Elections, this Court cannot go into such prayer as it is for the Election Commission to take note of the same. It is his further contention that even the Election Commission has no power to de-recognise any Political Party and if at all the Election Commission has any power, it can utmost, only de-register any Political Party symbol and there is no power under the People's Representation Act to de-recognise any political party and the matter is pending before the Law Commission for passing appropriate recommendations. As regards the question of de-recognition, the Hon'ble Apex Court has also observed in its order made in WP [C] No.157/2013 dated 12.03.2014 [PRAVASI Vs. UNION OF INDIA], that recommendations have been made to the Law Commission.
- The contention regarding valuation of the land during its purchase in the year 2014, the said value has been upheld by this Court on 16.04.2015 in a writ petition filed in WP.No.25989/2015.
- With regard to Clause 3 of the Sale Deed, the learned Advocate General submitted that there is no violation of the said clause and in any event, the Covenancy of the Sale Deed cannot be a subject matter of the writ petitions.
- With regard to the non-consideration of the representation sent by the petitioners on 29.12.2015, the learned Advocate General submitted that the representation was sent by the petitioner at 7.33 p.m. On 29.12.2015 and the E-Mail was sent only today, i.e., 30.12.2015 at 11.00 a.m., and before even the said representation could reach the respondents concerned, the petitioners have rushed to this Court in a hurried manner, without giving any breathing time to the respondents to act on their representation.
- Learned Advocate General has also relied on an order passed by this Court in WP.No.41045/2015 on 29.12.2015, dismissing the writ petition filed by one Balambal, on the ground of approaching this Court at an earlier stage. He also relied

on a Judgment of the Division Bench of this Court in WP.No.11504/2014 dated 23.04.2014 [A,MAHENDRAN Vs. THE HOME SECRETARY, GOVERNMENT OF TAMIL NADU, SECRETARIAT, CHENNAI-9 AND OTHERS].

- The writ petitions are not maintainable on the ground that the respondents 8 and 9 in WP.No.41107/2015 and the respondents No.10 and 11 in WP.No.41106/2015 are private parties and no writ is maintainable and no public duty is involved and no public right has been violated. The conduction of meeting is purely an arrangement between two private parties.
- Among other contentions, the learned Advocate General vehemently contended that the present site where the Meeting is to be held, is a vacant land and there exists no building or any Educational Institution as contended by the petitioners herein.
- Lastly, it is submitted that the allegations raised by the petitioners are vague and no sufficient materials have been produced by both the petitioners to substantiate their contentions.
- It is also his submission that the present writ petitions have been filed with a mala fide intention and that the said writ petitions have to be dismissed with costs.

6. To the submission of the learned Advocate General regarding non-violation of clause 3 of the Sale Deed, the learned counsel for the petitioner and the party-in-person submitted that no Educational Institution can be exploited by political parties and not only the parking areas are blocked but also the pedestrian pathways are also been used by them for their political meeting.

7. This Court carefully considered the rival submissions made on either side and also perused the documents placed before it.

8. The first and foremost aspect to be considered in these writ petitions filed in the form of Public Interest Litigation is as to whether the political meeting of the All India Anna Dravida Munnetra Kazhagam can be conducted in an Educational Institution, viz., Sri Ramachandra Medical College and Research Institute at No.24, Dr.Vasudevan Nagar, Thiruvanmiyur, Chennai - 600 041.?

9. Admittedly, there is no hard and fast rule for prohibiting anyone from conducting a meeting. In the cases on hand, the General Council Meeting and the Executive Meeting of the All India Anna Dravida Munnetra Kazhagam is scheduled to be held at the place stated supra on 31.12.2015 [tomorrow] at 10.30 a.m., and that the said venue is only a vacant land and no building is existing in the said place, as admitted by the petitioners themselves. Further, as regards the contention that Clause 3 of the Sale Deed dated 15.07.2014 is violated, this Court is of the view that the said contention is not the subject matter to be dealt with.

10. Insofar as the consideration of the representation dated 29.12.2015 is concerned, it is seen that the said representation has been dispatched at 7.30 p.m., on 29.12.2015, as could be seen from the postal receipt. Regarding the contention of the learned Advocate General that the E-Mail has been sent only today at 11.00 a.m., this Court is of the view that the said E-Mail is only a print out and that it has been specifically stated that representation has been sent 13 hours ago, viz., at 9.36 p.m., on 29.12.2015. But, the petitioners should have given some sufficient time to the respondents concerned to act on the said representation and without doing the same, they have rushed to this Court by way of filing these writ petitions. This Court in an earlier writ petition filed by the very same party-in-person along with one Rajaraman in WP.No.26696/2014 on 30.09.2014, by referring to the following decisions of the Apex Court, rejected the plea of the petitioners therein.

"10. In "Dr.B.Singh vs. Union of India - (2004) (3) SCC 363", the Supreme Court, in paragraph Nos.12 and 14, has held as follows:

"12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for

suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who moniter at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

"13.

"14. The Court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public spirited holy men. They masquerade as crusaders of justice. They

pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect."

11. In 2008(4) SCALE 848 - Common Cause (A Reg.Society) v. Union of India, the Supreme Court has held as follows:

"We have gone deep into the subject of judicial activism and public interest litigation because it is often found that courts do not realise their own limits. Apart from the doctrine of separation of powers, courts must realise that there are many problems before the country which courts cannot solve, however much they may like to. It is true that the expanded scope of Articles 14 and 21 which has been created by this Court in various judicial decisions e.g. Maneka Gandhi vs. Union of India and another - AIR 1978 SC 597, have given powerful tools in the hands of the judiciary. However, these tools must be used with great circumspection and in exceptional cases and not as a routine manner. In particular, Article 21 of the Constitution must not be misused by the courts to justify every kind of directive, or to grant every kind of claim of the petitioner. . ."

12. If this Court entertains the writ petition in the manner that the petitioners want, it would amount to judiciary interfering with the affairs of the Executive and the State and the prerogative of the elected Government, which has been deprecated in Union of India and another v. Azadi Bachao Andolan, (2004) 10 SCC 1 and Common Cause (A Reg. Society) v. Union of India, 2008 (4) SCALE 848, referred supra.

13. As regards the prayer for 'considering and disposing the representation, the Hon'ble Apex Court has categorically held in "Union of India v. M.K.Sarkar, reported in (2010) 2 SCC 59, the Hon'ble Supreme Court has held, in paragraphs 14 and 16, as follows:

"14. The order of the Tribunal allowing the first application of respondent without examining the merits, and directing the appellants to consider his representation has given rise to unnecessary litigation and avoidable complications. The ill-effects of such directions have been considered by this Court in C.Jacob v. Director of Geology and Mining [(2008) 10 SCC 115] Para 9.

"9. The courts/tribunals proceed on the assumption that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realise the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee file an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."

15.....

16. A court or tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with

reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct "consideration" without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect."

The Division Bench of this Court in A.MAHENDRAN's case [cited supra] has also held in paragraph 3 as follows:-

"3. It is well settled that a Constitutional authority or any other authority is entitled to have a reasonable time for consideration of a representation, if any, sent to them. A Seven Judge Bench of the Supreme Court in S.S.RATHORE Vs. STATE OF MADHYA PRADESH AND OTHERS [1990 AIR 10 = 1989 SCR SUPP [1] 43 = 1989 [4] SCC 542] has held that in case of statutory representation or appeal, the minimum period required is three to six months."

11. The next question that arises for consideration of this Court is to the maintainability of the writ petitions. The writ petitions may not be maintainable against the private parties, viz., the All India Anna Dravida Munnetra Kazhagam and Sri Ramachandra Medical College and Research Institute, if these two alone shown as parties. But, the prayer sought for by the petitioners is against the other official respondents. Without going into the maintainability of the writ petitions, we find that the relief sought for cannot be granted on the following grounds:-

- Firstly, there is no proof that the representation of the petitioners has reached the respondents concerned.
- Secondly, even if there is any violation as regards Clause 3 of the Sale Deed dated 15.07.2014, the remedy for the petitioners is not under the Article 226 of the Constitution of India and the remedy lies before the Civil Forum.

12. As regards the violation of the Model Code of Conduct by the All India Anna Dravida Munnetra Kazhagam, as on today there is no notification regarding the holding of any election and that the said Code of Conduct comes into force only from the date of Notification fixing the date of election and that exists till the completion of the elections. Hence, the contention that the All India Anna Dravida Munnetra Kazhagam has violated the Model Code of Conduct, has to be rejected at its threshold.

13. Though there is no averments with regard to removal of hoardings/flex boards/banners in the respective affidavits and though the said contentions were raised during the course of the arguments, this Court posed a question to the learned Advocate General as to whether appropriate permission has been obtained from the concerned authorities under the Chennai City Municipal Corporation Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003.?

14. The learned Advocate General answered that appropriate applications have been made before the authorities concerned for erecting the hoardings/banners/flex boards as per rules and the said contention of the petitioners has been raised by them in another writ petition and the First Bench of this Court has ceased of the matter.

15. For the foregoing reasons, this Court is of the considered view that the writ petitions are liable to be dismissed and accordingly, the same are dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

16. The learned Advocate General is directed to furnish the details of the following before this Court on 05.01.2016 :-

[a]The copies of the applications submitted by respective persons of the All India Anna Dravida Munnetra Kazhagam to erect hoardings/banners/flex boards and the permission granted by the authorities concerned and the details of the payments remitted;

[b]The details regarding the size of the hoardings/banners/flex boards ; width of the road and the names of the persons in whose names the permission have been sought for erecting such hoardings and the names of the persons that appear in the said hoardings/banners/flex boards.

[c] If such hoardings/banners/flex boards are erected in any residential premises, the copy of the permission taken from the respective landlords to be furnished.

[d] It is made clear that the payment/post-remittance of the amount by the party persons will not cure defect.

Post on 05.01.2016 for reporting compliance.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.
2. The Secretary,
To His Excellency the Governor of Tamilnadu,
Governor Secretariat,
Raj Bhavan,
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3. The Chief Secretary,
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4. The Secretary to Government,
Housing and Urban Development Department,
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5. The Chairman,
Tamilnadu Housing Board,
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6. The Secretary to Government,
Department of Health Services,
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Avvai Shanmugam Salai, Chennai.

11. The Chairman,
Sri Ramachandra Medical College and Research Institute,
No.24, Dr.Vasudevan Nagar, Tiruvanmiyur,
Chennai.

+1cc to Mr.T.Sivagnansambandam, Advocate, S.R.No.69783
+2cc's to the Government Pleader, S.R.No.69787
+2cc's to Mr.Traffic Ramasamy, S.R.No.69781

WP.Nos.41106 & 41107/2015

SG(CO)

CA(31/12/2015)

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