

C.R.P.(MD).No.2325 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.04.2026

PRONOUNCED ON: 25.06.2026

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.2325 of 2023

and

C.M.P.(MD).Nos.11941 of 2023 and 11078 of 2024

S.Raja Mohamed

... Petitioner/Petitioner

Vs.

1.The Tamil Nadu State Election Commission,
Chennai – 106,
Tamil Nadu State.

2.The District Collector,
Theni,
Theni District.

3.The Commissioner,
Periyakulam Municipality,
Periyakulam,
Theni District.

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the fair and decretal order dated 13.07.2023 made in El.O.P.No.41 of 2022 on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

For Petitioner : Mr.G.Prabhu Rajadurai
for M/s.Ajmal Associates



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For R-3

: Mr.N.Dilip Kumar

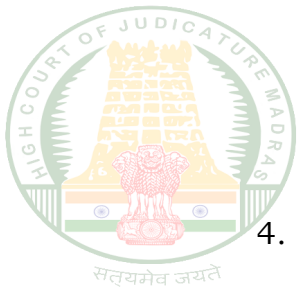
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ORDER

This Civil Revision Petition challenges the order and decretal order of the learned Additional District and Sessions Judge, Theni, sitting as an Election Tribunal in Election O.P.No.41 of 2022 dated 13.07.2023.

2. The petitioner is a resident of Periyakulam in Theni District. The Tamil Nadu State Election Commission announced elections to local bodies vide notification dated 28.01.2022. The petitioner, with a desire to become a Councillor in Periyakulam Municipality, filed his nomination for the 26th ward. Elections were held on 19.02.2022. The results were declared on 22.02.2022. The petitioner was declared elected as the Ward Councillor. A certificate was issued by the Election Officer cum Commissioner, Periyakulam Municipality, Theni District under Form-27.

3. The first council meeting was held on 02.03.2022. It was for the elected candidates to assume their respective offices. Two days later, on 04.03.2022, election was conducted for the office of the Chairman and Vice Chairman of the Municipality. The petitioner threw his hat to be elected as the Vice Chairman. He was the only candidate for the said post. He was declared elected.

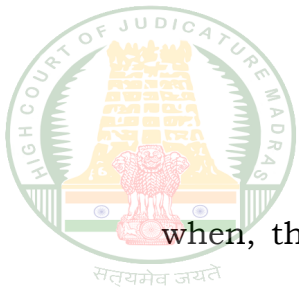


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4. On 12.04.2022, the Commissioner issued a show cause notice calling upon the petitioner to submit his explanation as to why he should not be disqualified from the post of Vice Chairman. The reason for issuing such a notice was because the petitioner was in occupation of Shop Nos.1 and 2 at the Old Fish Market Commercial Complex belonging to Periyakulam Municipality. The Commissioner had issued the notice invoking Section 49(2)(c) of the Tamil Nadu District Municipalities Act of 1920.

5. On being served with the notice, the petitioner challenged the same by way of a Writ Petition before this Court in W.P.(MD).No.7788 of 2022. The petitioner pleaded that the notice had been issued without jurisdiction or authority under law. It was urged by the petitioner that Section 49(2)(c) of the District Municipalities Act of 1920, when read with the proviso contained therein, would apply only to a case prior to the election (ie), when a person submits his nomination and not post the election.

5.1. This Court, after hearing both sides, made a suggestion to the Municipality as to whether the impugned notice can be withdrawn. The learned Standing Counsel for the Municipality reported to the Court that the notice issued on 12.04.2022 would be withdrawn. He sought for liberty to initiate fresh proceedings for disqualification as against the petitioner under the relevant provisions. Though this was opposed, this Court left it open to the parties to agitate the correctness of the subsequent proceedings, as and

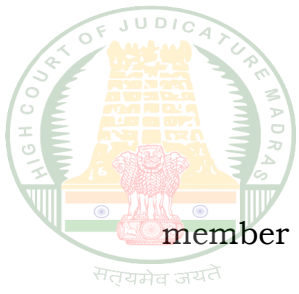


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when, they are initiated. The Writ Petition was disposed of accordingly on 22.04.2022.

6. Subsequently, the Commissioner, the 3rd respondent herein, issued a notice on 25.04.2022, invoking Section 50(1)(d) of the District Municipalities Act. Thereafter, he passed an order on 25.04.2022, declaring the petitioner as having been disqualified for being interested in a subsisting contract with the Municipality. Challenging the same, an election petition was presented before the jurisdictional District and Sessions Court.

7. The learned District Judge received the election petition as Election Petition No.41 of 2022. He called upon the respondents to file their counter. The respondents agreed to the list of dates and events that was given by the petitioner, including the earlier proceedings that had been initiated, the withdrawal thereof and the fresh notice issued under Section 50(1)(d). It was urged that the petitioner had been in occupation of Shop Nos.1 and 2 of the Old Fish Market Commercial Complex belonging to the Periyakulam Municipality from 2007 onwards. It was further pointed out that the period of occupation was extended upto 02.05.2022 and 24.10.2022 on payment of renewal fees. The letters of extension had been given by the petitioner and orders of extension had been passed by the 3rd respondent on his request. It was urged that the petitioner had incurred disqualification to be a Ward



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member of the Municipality and therefore, he was ineligible to continue in the post of the Vice Chairman. It was pleaded that the petitioner had deliberately suppressed the fact that he was an occupant of the Shop Nos.1 and 2 of the Municipality and that the interpretation sought to be given to Section 49(2)(c) read with Section 50(1)(d) by the petitioner is misplaced.

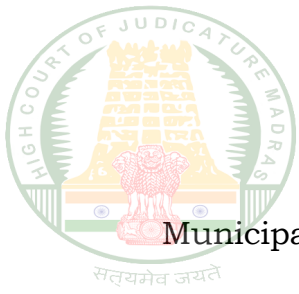
8. On the side of the petitioner, the petitioner examined himself as P.W.1. He marked Ex.P1 to Ex.P7. On the side of the respondents, the Municipal Commissioner examined himself as R.W.1. He marked Ex.R1 to Ex.R16.

9. On a consideration of the petition, counter and evidences let in before the Court, the Election Tribunal came to the following conclusions:

(i) The petitioner had taken lease of Shop Nos.1 and 2 from the respondent Municipality on 24.10.2007 and it had been extended from 03.05.2019 to 02.05.2022.

(ii) The petitioner had admitted in his cross-examination that the lease for Shop Nos.1 and 2 was still in force and he was paying rents for the same.

(iii) When the nomination papers were filed on 04.02.2022, the petitioner had not disclosed that Shop Nos.1 and 2 had been taken on lease. On these factual findings, the learned District Judge came to a conclusion that in terms of Section 49(2)(c) read with Section 50 of the District



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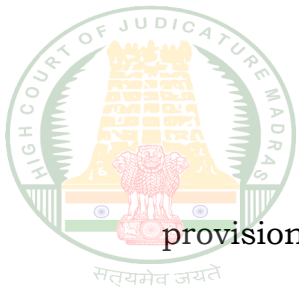
Municipalities Act, the petitioner was disqualified to contest for election as a Ward Member and consequently, his election as a Vice Chairman also is *void abinitio*. In view the said findings, the learned Judge came to a conclusion that the Election Petition deserved to be dismissed with costs and accordingly, he did so.

10. Challenging the same, the present revision, invoking Article 227 of the Constitution of India.

11. Mr.G.Prabhu Rajadurai appearing on behalf of M/s.Ajmal Associates made the following submissions:

(i) He urged that there is a difference between the words “*licence*” and “*lease*” used in the District Municipalities Act and it cannot be given the same treatment for the very terms used in the Transfer of Property Act. He pointed out that in Section 261(2) of the District Municipalities Act, the word “*lease*” or “*tenure*” is used and that tenure includes licence. Therefore, he pointed out that the interpretation that is given to these terms normally should not be made applicable to the District Municipalities Act.

(ii) Relying upon the judgment of the Supreme Court in ***Provash Chandra Dalui and another Vs. Biswanath Banerjee and another, 1989 Supp (1) SCC 487***, he pointed out that it is not an acquisition of a new right and therefore, a subsisting contract would not attract the



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provisions of Section 50 of the District Municipalities Act. He also relied upon a judgment of this Court in ***K.M.Rajaram Vs. Chinnathurai and another, (1968) 81 LW 254***, to urge the difference between a completed lease and subsisting contract, where there is a continuing liability to pay rent and that such a lease would not attract the disqualification under the District Municipalities Act.

12. Per contra, Mr.N.Dilip Kumar, learned Standing Counsel for the Municipality, urged that if there is a subsisting contract between a person and the Municipality, he is disqualified to stand for election. He pointed out that the only exception, which the statute permits, is a shareholder of the company, as a contract with the company cannot be treated as a contract with the individual. He further urged that the plea to read the words “*licence*” and “*lease*” as having similar context under the District Municipalities Act, as attempted by Mr.G.Prabhu Rajadurai, is not a wrong one. According to him, licences under the District Municipalities Act are permissions to do certain acts and they cannot be treated as lease. He added that the exception has to be read strictly and referred to Section 344 of the said Act to point out that “*rents*” and “*fees*” have been used separately and they are not interchangeable. The interpretation he attempted to give of the word “*acquisition*” is whether it is a renewal or not, a new right is created. He invited the attention of this Court to Ex.R9, Ex.R14 and Ex.R15 to point out



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that the words used in the letters were “புதுப்பித்து”, implying a new contract.

He urged that the learned Additional District and Sessions Judge had analysed all these issues in detail and consequently, seeks confirmation of the order of the Election Tribunal. He relied upon a judgment of a Division Bench of this Court in ***P.Muthusamy Vs. State of Tamil Nadu and others, (2014) 5 MLJ 129***, to urge that applying the judgment, the petitioner can be categorised only as a licensee and not as a lessee.

13. By an order dated 23.03.2026, I summoned the original records from the file of the learned Additional District and Sessions Judge, Periyakulam. The records have been submitted. I have gone through the same.

14. The following facts are not in dispute:

The petitioner's nomination for contesting as a Ward Councillor for Ward No.26 of Periyakulam Municipality was accepted by the Commissioner. Under the directions of the Tamil Nadu Election Commission, it was the third respondent, who conducted the election. The results of the election threw up the petitioner as the Ward Councillor for the aforesaid ward. On 04.03.2022, he was declared elected (unopposed) to the post of the Vice Chairman of the Municipality. It is also not in dispute that the petitioner is running Shop Nos.1 and 2 at the Old Fish Market



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Commercial Complex belonging to the respondent Municipality. Initially, a show cause notice was issued invoking Section 49(2)(c) of the Tamil Nadu District Municipalities Act. On the suggestion of this Court in W.P.(MD).No. 7788 of 2022, the same was withdrawn. The third respondent issued fresh proceedings on 25.04.2022, disqualifying the petitioner invoking Section 50(1)(d) of the Tamil Nadu District Municipalities Act.

15. I shall now refer to Section 50(1)(d) of the Act. The said provision reads as under:

*“50. Disqualification of Councillors .— (1) Subject to the provisions of Section 51, a Councillor shall cease to hold his office, if he —
(d) subject to the proviso to clause (c) of sub-section (2) of Section 49, acquires any interest in any subsisting contract made with, or work being done, for the Council except as a shareholder (other than a director), in a company ***.”*

Section 50(1)(d) is not a stand alone section. It has to be read subject to Section 49(2)(c) of the District Municipalities Act. Section 49 deals with pre-election disqualification and Section 50 deals with post election disqualification.

16. Section 49(2)(c) of the District Municipalities Act reads as under:

*“49. Disqualification of candidates:
(2) A person shall be disqualified for election as a Councillor if such person is at the date of nomination or election,*



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....

(c) interested in a subsisting contract made with, or any work being done for, the Municipal Council except as a shareholder (other than a director) in a company :

Provided that a person shall not be deemed to have any interest in such contract or work by reason only of his having a share or interest in --

(i) any lease, sale or purchase of immovable property or any agreement for the same ; or

(ii) any agreement for the loan of money or any security for the payment of money only;

...”

A perusal of Section 49(2)(c) indicates that if a candidate is interested in any subsisting contract made with, or any work being done, for the Municipal Corporation, he is disqualified. The only exception provided under Section 49(2)(c) is when the candidate has a share or interest in any lease, sale or purchase of immovable property or any agreement for the same; or for any agreement for the loan of money or security for the payment of money only.

17. This takes us to the interpretation of the word “*subsisting contract*”. Subsisting contract can be defined as a legally binding agreement between the parties. It should be current, in force and not yet fully performed. This contract should also not be terminated, discharged or nullified. In other words, the relationship should continue and the parties



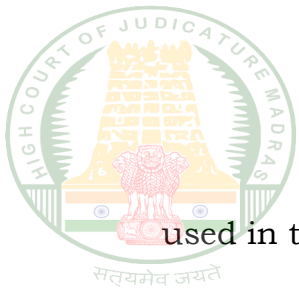
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remain bound by the terms to perform their respective duties and obligations. The kernel of a subsisting contract are two-fold:

- (i) The currency of the validity and
- (ii) continuance of performance.

18. A perusal of the records shows that under Ex.R9, by an order dated 26.12.2019, on the request of the petitioner, his right to occupy the aforesaid shops was extended by the Municipality. Ex.R12 and Ex.R13 are the agreements entered into by the petitioner with the respondent Municipality for Shop Nos.1 and 2 respectively. Under Ex.R9, it is clear that the petitioner had obtained an extension order for being in occupation of Shop Nos.1 and 2. The period that was granted under the proceedings of the Commissioner was from 03.05.2019 to 02.05.2022 with respect to Shop No.1 and 25.10.2019 to 24.10.2022 with respect to Shop No.2. I have already pointed out as to what a subsisting contract means. It should not be a completed transaction where nothing remains to be done by the contracting parties.

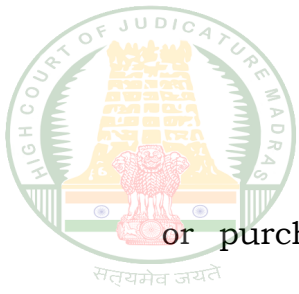
19. First, I have to see whether the petitioner is a lessee or a licensee. Interpreting a similar relationship between the parties, a Division Bench of this Court in ***P.Muthusamy Vs. State of Tamil Nadu and another, (2014) 5 MLJ 129***, at paragraph 20, held that though the word “lease” has been



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used in the contract, it is a mere licence to run the shops. The Bench added, just because the word “lease” had been mentioned, a licence cannot *ipso facto* be converted into a lease. The licence being issued on fixed terms, it should be treated as such and not as in the lease agreement.

20. The reason why Mr.G.Prabhu Rajadurai referred to the judgment in ***K.M.Rajaram Vs. Chinnathurai and another, (1968) 81 LW 254***, is because, according to him, nothing remained to be done by the contracting parties once a lease is entered into and consequently, it will not be covered by the words “subsisting contract”. This plea cannot be accepted in the light of the categorical pronouncement of the Division Bench in ***P.Muthusamy***'s case. The petitioner's position is only as a licensee and unlike the case of completed leases and transfers, it is not a concluded contract, but an existing one. It is only in cases where nothing further is to be done by the contracting parties, can it be treated that it is not a subsisting contract. In view of the letter written by the petitioner himself seeking for renewal and the consequential proceedings issued under Ex.R9, this Court has to point out that on the date on which nomination was filed, there was a contract in subsistence between the petitioner and the respondent Municipality and consequently, he has to be treated as disqualified for conduct as a Ward member. In terms of Section 50 read with Section 49(2)(c) of the District Municipalities Act, the exceptions are specific. They apply only for lease, sale

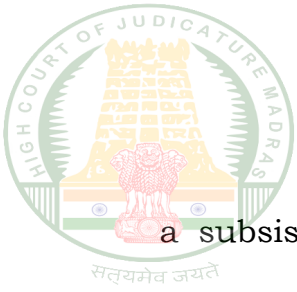


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or purchase of immovable property or agreements thereof. When the Division Bench has treated the relationship between the parties as licence, the civil revision petitioner cannot be treated as a lessee for me to apply the judgment in **K.M.Rajaram**'s case.

21. The plea of Mr.G.Prabhu Rajadurai that the Act does not make a difference between a lease and licence, though attracts, cannot be accepted. This is because, a perusal of Sections 183(4) and 183(6) of the District Municipalities Act shows that a difference has been drawn by the legislation with respect to lease and licence. Similarly, under Section 261(2) of the Act, a difference is made between the terms “lease” and “tenure”. Licence would fall under the latter category. Similarly, Section 303(2)(d) of the Act also uses the word “lease or otherwise”. Once the petitioner does not fall under the category of a lessee, he can only be treated as a licensee. If he is a licensee, then, there is a subsisting contract and by virtue of Section 50(1)(d), he attracts disqualification.

22. Let me now turn to the authorities cited by Mr.G.Prabhu Rajadurai. In **K.M.Rajaram Vs. Chinnathurai and another, (1968) 81 LW 254**, the petitioner had taken the lease of coconut tope belonging to the Perambur Panchayat Mayuram Taluk. The Election Commissioner of Panchayats (District Munsif) Mayuram came to a conclusion that there was



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a subsisting contract in respect of the tope at the date of nomination.

Consequently, he invoked Section 25(2)(c) of the Panchayat Act of 1958 and disqualified the petitioner from the election as a Panchayat member. This order was put to challenge before this Court by way of a Writ Petition.

23. Venkatadri, J. (as he then was) came to a conclusion that there was an error apparent on the face of record in the impugned order. After reviewing several authorities, he came to a conclusion that completed leases or transfers, where nothing remains to be done by the contracting parties, cease to be “subsisting contracts” of the kind contemplated by the statute. He pointed out that such transactions are governed by the Transfer of Property Act and liabilities are enforceable under that Act, rather than continuing contractual obligations under the Contract Act or Specific Relief Act. A lease of a coconut tope cannot be compared with occupation of shops belonging to the Municipality, especially when the Division Bench has concluded that such occupancy creates a relationship of a license and not of a lease.

24. Mr.G.Prabhu Rajadurai relied upon the judgment of the Supreme Court in ***Provash Chandra Dalui and another Vs. Biswanath Banerjee and another, 1989 Supp (1) SCC 487***, in order to show that the word “extension” implies to enlarge, expand, lengthen, prolong and to carry out



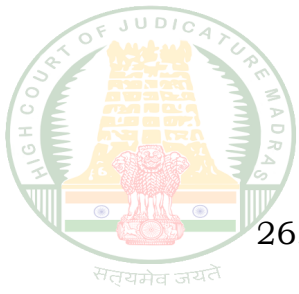
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further than its original limit. He relies on paragraph 14 of the judgment to urge that there is a distinction between extension and renewal. In case of a renewal, a new lease is required, while in the case of extension, the same lease continues in force.

25. The said judgment arose on the interpretation of the Calcutta Thika Tenancy Act of 1949. In the said case, the property had been leased through a registered lease deed dated 26.09.1946. The terms of the lease were on the following terms:

For the first 10 years, the monthly rent of Rs.200/- was payable and there was a provision for two extensions of five years each- totalling additional 10 years, with enhanced rent of Rs.250/- and Rs.300/-.

26.1. The landlord filed an ejectment suit. The tenants claimed that they were protected under the Calcutta Thika Tenancy Act of 1949. This statute had excluded any lease of duration expressly stated to be not less than 12 years. The tenants argued that since they did not exercise option of renewal after the expiry of the initial period of 10 years and as they did not pay the enhanced rent, the lease fell below the 12 year statutory threshold of the Act and consequently, they were protected from eviction.



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26.2. The Supreme Court held that the legal effect and nomenclature of registered document must be gathered from the document in its entirety and not from isolated clauses and titles. It followed the classic test of *ut res magis valeat quam persat* – construction of a document should give effect to all clauses rather than rendering any clause regimented. Consequently, reading the document as a whole, the Court determined the total intended duration was 20 years and thereby, the tenancy was excluded from protection under the 1949 Act.

26.3. It was in those circumstances, the Court explained the difference between “extension” and “renewal”. “Extension” prolongs the existing relationship on the same terms as the original agreement. No new agreement or execution of lease is required. The time period is simply expanded according to the original terms. However, in case of a renewal, the execution is of a completely fresh lease and it brings about a new relationship necessitating fresh execution of documents.

27. This judgment, instead of going in favour of Mr.G.Prabhu Rajadurai, goes against him. The letters written by the petitioner in Ex.R14 and Ex.R15 pointed out his request for renewal [“புதுப்பித்து”] and the consequential order in Ex.R9 passed by the Municipal Commissioner points out a fresh relationship of lease with enhanced rent for a fresh period of



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time. Hence, I conclude, applying the judgment of the Supreme Court in

Provash Chandra's case, that it was not a case of extension of an existing contract, but renewal of a contract, thereby, making it a subsisting contract on the date of filing of the nomination.

28. Mr.G.Prabhu Rajadurai next relied upon the judgment of the Supreme Court in **Sanjay Ramdas Patil Vs. Sanjay and others, (2021) 10 SCC 306**. He invited my attention to paragraph Nos.29 and 30. This judgment holds that a Court must adopt a harmonious construction of the statute. It also held a statute must be read as a whole and a construction which preserves workability and efficiency of law must be adopted, rather than one that renders any statutory provision a “useless lumber” or a “dead letter”. This position of law is well settled. The purpose of incorporating Sections 49 and 50 in the District Municipalities Act was to ensure that a person, who has a subsisting contract with the Municipal Council, must not be in a position of power so as to enable him to benefit from the said position. If a person, who is having a subsisting contract becomes a power holder, obviously, he would be in a position to dictate how the terms of the contract must be provided. The statute does not hold that such power should actually be exercised. But, on the contrary, reading the statute as a whole, as pointed out in the aforesaid judgment, it prevents such persons from entering the office. The purpose of the statute can be interpreted from



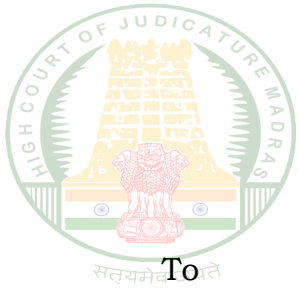
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reading Sections 49 and 50, namely, that if a person has a subsisting contract, his nomination before election should be rejected and if it has escaped attention at that stage or if a contract is entered into subsequently, Section 50(1)(d) can always be invoked for disqualifying the person from holding the office.

29. In the light of the above discussions, I do not find any error in the order passed by the learned Election Tribunal as the petitioner was interested in a subsisting contract, namely, occupying Shop Nos.1 and 2 at the Old Fish Market Commercial Complex belonging to the respondent Municipality and his act attracts Section 50(1)(d) of the Tamil Nadu District Municipalities Act, 1920. Hence, the Civil Revision Petition is without merits. It deserves to be dismissed and is accordingly dismissed. The respondents will be entitled to their costs. Consequently, connected miscellaneous petitions are closed.

25.06.2026

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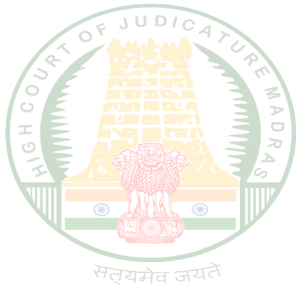


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To

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Theni at Periyakulam.
- 2.The Tamil Nadu State Election Commission,
Chennai – 106,
Tamil Nadu State.
- 3.The District Collector,
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- 4.The Commissioner,
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Periyakulam,
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V.LAKSHMINARAYANAN,J.

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