

W.P(MD)Nos.29035, 29217 & 30354 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.01.2025

PRONOUNCED ON : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)Nos.29035, 29217 & 30354 of 2024
and
W.M.P(MD)Nos.29035 & 24599 of 2024
& 286 of 2025

1.W.P(MD)No.29035 of 2024:

R.Kathiravan

... Petitioner

Vs

- 1.The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Near Thamarai Thotti,
K.Pudur, Madurai - 625 002.
- 2.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Sub-Division - Madurai South,
Near District Court,
Madurai - 625 002.
- 3.The Assistant Engineer,
Highways Department,
Construction and Maintenance,
Sub-Division Madurai South,
Near District Court,
Madurai - 625 002.
- 4.The Tahsildar,
Thiruparankundram Taluk,
Madurai.



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5.The Assistant Commissioner of Police,
Thidir Nagar Circle,
S.S.Colony,
Madurai - 625 016.

6.The Inspector of Police,
C-3, Subramaniyapuram Police Station,
Madurai - 625 003.

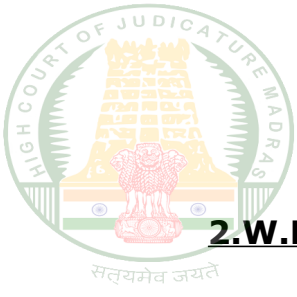
... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in Ku.No.818/2024/E.Va.A dated 29.11.2024 passed by the second respondent and quash the same as illegal and consequently direct the respondents to grant permission to erect the Anaithu India Anna Dravida Munnetra Kalagam (AIADMK) Party's flagpole at Ward No.74, Bus-Stop, Opposite to Jeyam Theatre, Bye-pass Road, Palanganatham, Madurai City.

For Petitioner : Mr.P.Balamurugan

For RR 1 to 4 : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.S.Shanmugavel
Additional Government Pleader

For RR 5 & 6 : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
Assisted by
Mr.R.M.Anbunithi
Additional Public Prosecutor



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2.W.P(MD)No.29217 of 2024:

K.R.Chithan

... Petitioner

Vs

- 1.The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai.
- 2.The District Revenue Officer,
Collectorate Campus,
Madurai.
- 3.The Revenue Divisional Officer,
Madurai North Division,
Madurai District.
- 4.The Tahsildar,
Madurai North Taluk Office,
Madurai District.
- 5.The Assistant Commissioner,
Madurai Corporation,
Madurai North Division No.II,
Race Course Road,
Madurai.
- 6.The Assistant Commissioner of Police,
Sellur Circle,
Madurai District.
- 7.The Inspector of Police,
D3 Koodal Nagar Police Station,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 5 to grant permission to erect the Anaithu India Anna Dravida Munnetra Kalagam (AIADMK) Party's flagpole at opposite to MGR



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Mandram at Kamatchi Nagar, Vilankudi, Ward No.20, Madurai City
within a stipulated time fixed by this Court.

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For Petitioner : Mr.P.Balamurugan
For RR 1 & 5 : Mrs.S.Devasena
Standing Counsel
For RR 2 to 4 : Mr.D.Gandhi Raj
Special Government Pleader
For RR 5 & 6 : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
Assisted by
Mr.R.M.Anbunithi
Additional Public Prosecutor

3.W.P(MD)No.30354 of 2024:

V.Chandran ... Petitioner

Vs

1.The District Collector,
Madurai District,
Madurai.

2.The Tahsildar,
Taluk Office,
Peraiyur Taluk,
Madurai District.

3.The Inspector of Police,
Saptur Police Station,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to direct the respondents for reinstalling the Viduthalai Chiruthaigal Katchi (VCK) party flagpole and the name board at Athipatti Village, Peraiyur Taluk, Madurai



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District by considering the petitioner's representation dated 25.11.2024 within the time frame fixed by this Court.

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For Petitioner : Mr.A.Ramkumar

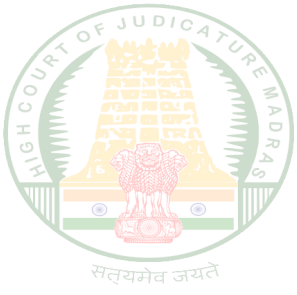
For RR 1 & 2 : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.D.Gandhi Raj
Special Government Pleader

For R – 3 : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
Assisted by
Mr.R.M.Anbunithi
Additional Public Prosecutor

COMMON ORDER

W.P(MD)No.29035 of 2024 has been filed by the petitioner challenging the order passed by the second respondent dated 29.11.2024 thereby rejecting the request made by the petitioner to erect their party flagpole at Ward No.74, Bus-Stop, Opposite to Jeyam Theatre, Bye-pass Road, Palanganatham, Madurai.

2.W.P(MD)No.29217 of 2024 has been filed by the petitioner for a direction directing the respondents to grant permission to erect their party flagpole at opposite to MGR Mandram at Kamatchi Nagar, Vilankudi, Ward No.20, Madurai City.



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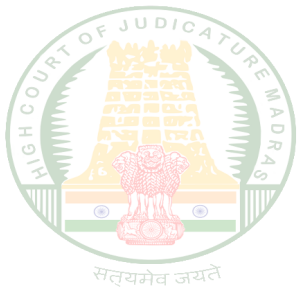
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3.W.P(MD)No.30354 of 2024 has been filed by the petitioner for a direction directing the respondents to grant permission for reinstalling their party flagpole at Athipatti Village, Peraiyur Taluk, Madurai District.

4.In all the Writ Petitions, the issue is common and as such, this Court dispose of all the Writ Petitions by common order.

5.The petitioner in W.P(MD)No.29035 of 2024 submitted a representation before the respondents seeking permission to erect their party flagpole at Ward No.74, Bus-Stop, Opposite to Jeyam Theatre, Bye-pass Road, Palanganatham, Madurai and the same was rejected by the second respondent dated 29.11.2024, on the ground that there would be possible for accident.

6.W.P(MD)Nos.29217 and 30354 of 2024 have been filed by the petitioner for a direction directing the respondents to grant permission to erect their party flagpole in their respective mentioned places.



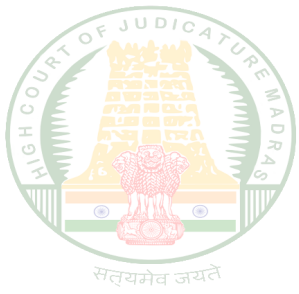
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7.This Court raised the following questions to the respondents:

(i) Whether any law provides granting permission to erect the political parties or Communities or Religions or Organizations flagpole permanently in the land owned by the National Highways, State Highways, Corporations, Municipalities and Local Bodies.

(ii) What basis on which the Police authorities and the Revenue authorities are granting No Objection Certificate for erecting the political parties, Communities, Religions and organizations' flagpoles permanently in the public land owned by various authorities.

(iii) How many cases have been registered with regard to disputes between the political parties while erecting their respective flagpole, while celebrating public functions near their respective party flagpole and hindrance to public and transport or any untoward incident which had



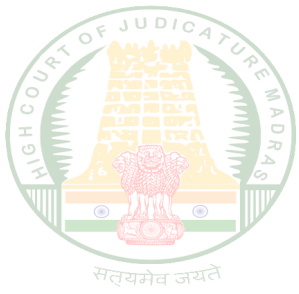
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happened due to the erection of respective parties
flagpole.

8.The Director General of Police/Head of Police Force, Tamil Nadu filed a status report stating that so far 114 cases were registered in connection with the issue raised by this Court arising out of the erection of flagpoles of political parties. Out of 114 cases, 77 cases were registered for erecting flagpoles without getting necessary permission from the authorities and 37 cases were registered against grave incidents involving prevention of discharge of duty by Government servants, damage to public property, road roko/agitations, stone pelting hurt/grievous hurt/attempt to murder and Prevention of Atrocities Act. Further revealed from the status report that already the Hon'ble Division Bench of this Court issued directions in **W.P.No.17768 of 2016, dated 02.04.2019 [A.Radhakrishnan Vs. Chief Electoral Officer, Secretary to Government and others]** to remove and regulate the erection of flagpoles of political parties in public places and roads. The directions issued by the Hon'ble Division Bench of this Court in W.P.No.17768 of 2016, dated 02.04.2019 are as follows:



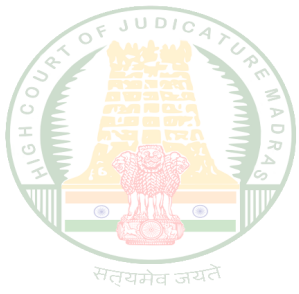
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"19. Erection of poles without permission is an encroachment, as per provisions of the statutes extracted supra. Such encroachments noticed already have been moved. Therefore, it is for the authorities under the above-said statutes to ensure that there is no fresh encroachment after the declarations of elections. There shall not be any flagpoles with or without construction, on any streets, roads, state or national highways, as the case may be, without permission of the authorities under the above-said Acts.

20. Judicial notice be taken that normally when functions are held by the political parties or other organizations or by individuals, temporary poles are erected and while doing so, roads and pavements are damaged. Judicial notice is also taken that they are not repaired or resurfaced immediately, but, at times repaired after considerable time, resulting in loss of exchequer to the Government or Local bodies, as the case may be. In the light of the statutory provisions, providing penal action and recovery, hitherto, penal action and steps to recover the damages caused, to the roads, streets, etc, be assessed and accordingly action taken. Respondents are directed to issue necessary instructions to all the subordinate officers for strict compliance of this order.



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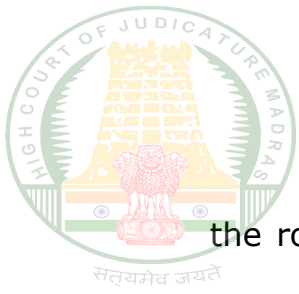
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21. Field Officers be accordingly directed to report to the concerned district authorities, to take action. Field Officers be instructed that violation of any direction issued by the authorities, departmental action would be taken. Respondents to ensure strict compliance of this order. Assistance of police be given wherever necessary.

22. If any permission is sought for to put up flag poles, the same shall be accorded in accordance with the statutory provisions. District Collectors and the competent authorities under the above Statutes are directed to monitor enforcement of the orders passed by this Court periodically, once in a month. If there are violators, stringent action should be taken. District Collectors are also directed to periodically review once in two months and send a report to the Heads of the Departments.”

The above directions were duly complied with.

9.The Divisional Engineer, Highways Department filed a counter-affidavit in W.P(MD)No.29035 of 2024 and on the submissions made by Mr.R.Baskaran, learned Additional Advocate General would reveal that the public streets and roads vest with the State Government and the State is the trustee on behalf of the public. Though the general public are entitled as beneficiaries to use

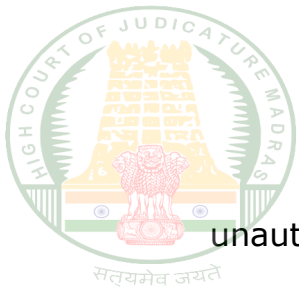


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the roads and streets as a matter of right, it is limited only by the similar rights possessed by every other citizen to use the pathways.

The State is entitled to impose such limitations to the users as may be requisite for protecting the rights of the general public. Therefore, the State has power to grant permission or reject the permission to erect anything in the public place such as roads, streets etc. Hence, the request made by the petitioner in W.P(MD)No.29035 of 2024 cannot be considered and the Writ Petition itself is liable to be dismissed.

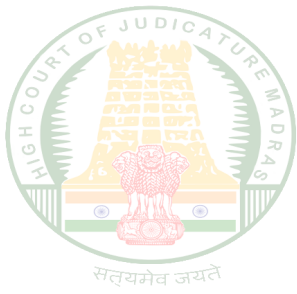
10.Mr.Hasam Mohammed Jinnah, learned State Public Prosecutor appearing on behalf of the Police would submit that there is no specific provision under any law to grant permission to erect the political party flagpole in the public place. However, on the basis of the No Objection Certificate issued by the concerned Revenue Department and the Police Department, the particular Department where the permission sought for to erect the flagpole was granted permission to erect the flagpole. As directed by the Hon'ble Division Bench of this Court in **W.P.No.17768 of 2016, dated 02.04.2019 [A.Radhakrishnan Vs. Chief Electoral Officer, Secretary to Government and others]** in all Districts, the



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unauthorized erected flagpoles are removed from time to time and necessary action have been taken as against the person who erected the flagpole unauthorizedly.

11.The learned State Public Prosecutor also relied upon the order of the Hon'ble Supreme Court of India in ***I.A.No.10 of 2012 in SLP(Civil)No.8519 of 2006 dated 18.01.2013 [Union of India Vs. State of Gujarat and others]*** in which, the Hon'ble Supreme Court of India dealt with the issue of installation of statue in Kanniyakumari National Highway near bus stand of Neyyattinkkara-Poovar Road, Neyyattinkkara, Kerala and issued direction that the State Government shall not grant any permission for installation of any statue or construction of any structure in public roads, pavements, sideways and other public utility places. This direction shall apply to all States and Union Territories. The concerned Chief Secretary/Administrator shall ensure compliance of the above order. Even then, the authorities from the respective Departments grant permission/licence to erect permanent flagpole in the public utility places. Therefore, he prayed to issue necessary directions to regulate the erection of political parties and other organizations flagpoles in the Government property as well as private properties.



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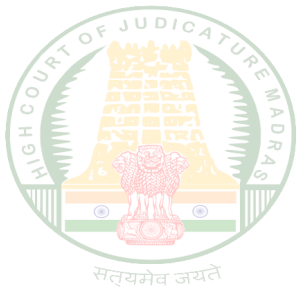
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12.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

13.On perusal of the pleadings, status report, counter-affidavit and other relevant records the following points arise for consideration in these Writ Petitions:

(i) Whether any law permits the political parties, Communities, Religions and Organizations etc., to erect their respective flagpole permanently in the public places or the land owned by the National Highways, State Highways, Corporation, Municipality and Local Bodies.

(ii) Whether the Revenue Department and the Police Department have jurisdiction/power to issue No Objection Certificate to erect flagpoles of political parties, Communities, Religions and Organizations etc.



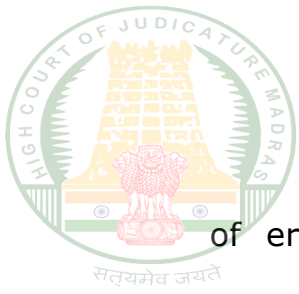
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(iii) Any temporary structures erected in the

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National Highways, State Highways, Corporations, Municipalities, Local Bodies and Organizations are liable to pay rent or not.

14. Everywhere in the public places such as bus-stop, junctions of the road, corners of the street, in front of the parks and adjacent to the road, there are permanent flagpoles erected by their respective political parties. In some places, there are flagpoles erected by particular community people and in some places, there are flagpoles erected by particular Religions in order to endorse their presence. It causes nuisance, obstructing free flow of traffic, leads to quarrel between political parties and also dangerous to life of general public. Therefore, a Public Interest Litigation Writ Petition was filed in W.P.No.17768 of 2016 for a direction directing the respondents to take action to remove the flagpoles erected in public places permanently or temporarily all over the State of Tamil Nadu. The Hon'ble Division Bench of this Court by order dated 02.04.2019, issued the above mentioned directions. In fact, while pending the Writ Petition, the Hon'ble Division Bench of this Court directed the official respondents to file a status report with regard to the menace



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of erecting flagpoles near the side of the State and National Highways etc. At the first instance, the status reports were filed from 31 Districts of the State of Tamil Nadu which would reveal that 58,971 flagpoles were erected without permission and 58,172 flagpoles have been removed. Subsequently, another status reports were received from the remaining 10 Districts. Accordingly, the flagpoles which were erected without permission were removed and the flagpoles which were erected with permission are maintained by their respective political parties and other organizations.

15.The roads maintained by the National Highways Authority of India are governed by the National Highways Authority of India Act, 1988. The roads maintained by the National Highways is governed by the National Highways Act, 1956. The State Highways, major District roads, other District roads are governed by the Tamil Nadu Highways Act, 2001. The roads maintained by local bodies such as Corporations, Municipalities, Town Panchayats, Panchayats etc are governed by the Tamil Nadu Urban Local Bodies Rules, 2023. It is relevant to extract the provisions of those Acts hereunder and the related statutes with regard to the erection of temporary or permanent structures in the land owned by the State



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Highways, National Highways, Corporations, Municipalities and Local Bodies to answer the first point.

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The Tamil Nadu Highways Act, 2001:

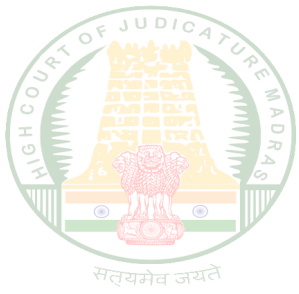
16.The provision under Section 26 of the Tamil Nadu Highways Act, 2001, deals with the prevention of unauthorized occupation of Highways. It is relevant to extract the provision under Section 26 of the Tamil Nadu Highways Act, 2001 hereunder:

"26. Prevention of unauthorised occupation of highway.-

(1) No person shall occupy or encroach on any highway within the highway unauthorised occupation of boundaries. Highway.

(2) Notwithstanding anything contained in sub-section (1), the Highways authority may, with the concurrence of the Collector and with due regard to the safety aid convenience of traffic and subject to such conditions, and on payment of such rent or other charges as may be prescribed, grant permission, of a temporary nature, to any person-

(a) to make any temporary use of any highway in front of any building owned or occupied by him or make a temporary structure overhanging the highway; or (b) to put up a temporary awning or tent, pandal or other similar erection



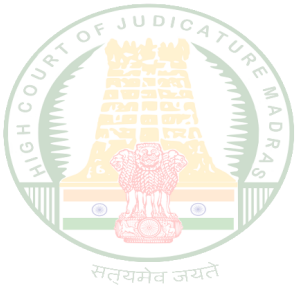
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or a temporary stall or scaffolding on any highway; or (c) to deposit or cause to be deposited building materials, goods for sale or other articles on any highway for a specified period; or (d) to make a temporary excavation on any highway for carrying out any repairs or improvements to building on lands adjoining such highway:

Provided that no such permission shall be deemed to be valid beyond a period of one year, unless it is expressly renewed by the Highways authority. (3) permission granted under sub-section (2) shall clearly specify the date upto which and the purpose for which the occupation of the highway is authorised and the exact portion of the highway so permitted to be occupied, and shall also be accompanied by a plan or sketch of that portion of the highway. A copy of such permission shall be communicated to the Collector for the purpose of record. (4) The person in whose favour such permission has been given shall produce the permit for inspection whenever called upon to do so by the Highways authority, or any officer authorised by it in that behalf and shall, at the end of the period specified in the permit, vacate the portion of the highway occupied by him, after restoring it to the same state as it originally stood before the occupation by him. (5) The Highways authority shall maintain a complete record of all such permissions granted, and shall also cause an inspection to be made in every case at the expiration of the period upto which such occupation has been permitted, to ensure that the portion of the highway has actually been vacated. (6) The permission granted under sub-section (2)



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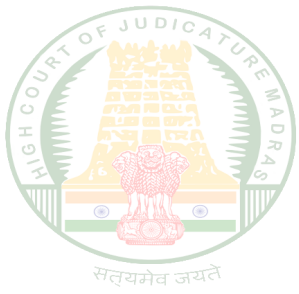
shall be in such form and subject to such conditions as may be prescribed.”

Thus, it is clear that only temporary occupation can be permitted that too not exceeding the period of one year by collecting rent or other charges with the concurrence of the Collector and with due regard to the safety aid and convenience of traffic.

17.The provision under Section 30 of the Tamil Nadu Highways Act, 2001, deals with the restoration of property to its original state where it is dealt with in contravention of Section 9. It is relevant to extract the provision under Section 30 of the Tamil Nadu Highways Act, 2001, which reads as follows:

“30.Restoration of property to original state where it is dealt with in contravention of section 9.-

(1) Where any person has erected any building or made or extended any excavation or carried out any mining or other operation or made any material change in the use of land, or constructed, formed or laid out any work of means of access or any other acts in contravention of section 9 or in contravention of any of the terms and conditions of the permission granted under sub-section (2) of section 26, the



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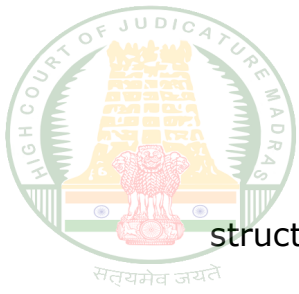
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'Highways authority may, by order, require such person to restore the land or building to its original condition or to bring the land or building in conformity with the terms and conditions specified in such permission, within such period as may be specified in the order. (2) If such person fails to comply with such order within the period specified in the order, the Highways authority may itself take such measures as appear to it to be necessary to give effect to the order and recover the cost thereof from such person as an arrear of land revenue.'

Accordingly, if any violation of the condition imposed while permitting to occupy temporarily and after a period of permission if the said temporary structure is not removed, it shall be removed at the cost of that particular person. Therefore, the Tamil Nadu Highways Act, 2001 does not permit to erect any permanent structure such as flagpole by any persons in the land owned by the State Highways.

The Control of National Highways (Land and Traffic) Act, 2002:

18. Section 24 of the Control of National Highways (Land and Traffic) Act, 2002, deals with the prevention of occupation of highway land and permission to be granted to place a movable



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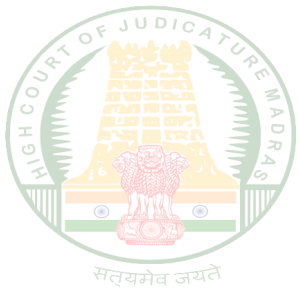
structure on the Highway in front of any building owned by a person or to make a movable structure on support of such building and over the Highway. It is relevant to extract the provision under Section 24 of the Control of National Highways (Land and Traffic) Act, 2002 hereunder:

"24. Prevention of occupation of highway land.

—(1) No person shall occupy any highway land or discharge any material through drain on such land without obtaining prior permission, for such purpose in writing, of the Highway Administration or any officer authorised by such Administration in this behalf.

(2) The Highway Administration or the officer authorised under sub-section (1) may, on an application made by a person in this behalf and having regard to the safety and convenience of traffic, grant permission to such person—

(i) to place a movable structure on the Highway in front of any building owned by him or to make a movable structure on support of such building and over the Highway, or



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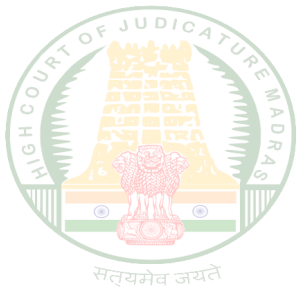
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(ii) to put up a temporary lawning or tent or other similar construction or a temporary stall or scaffolding on the Highway, or

(iii) to deposit or cause to be deposited, building materials, goods, for sale or other articles on any Highway, or

(iv) to make a temporary excavation for carrying out any repairs or improvements to adjoining buildings, and such permission shall be granted subject to the conditions and on payment of the rent and other charges by issuing permit in the form as may be prescribed: Provided that no such permission shall be valid beyond a period of one month at a time from the date on which the permission has been granted unless it is renewed by the Highway Administration or such officer on an application made by such person for the renewal of the permission.

(3) The permission granted under sub-section (2) shall specify therein— (i) the time up to which the permission is granted; (ii) the purpose of such permission; (iii) the portion of the Highway in respect of which the permission has been granted, and shall be accompanied with a plan or sketch of such portion of Highway.



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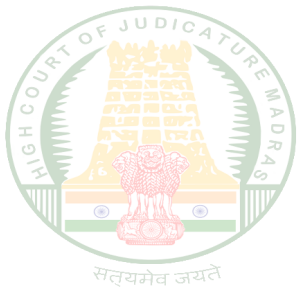
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(4) The person, to whom the permit has been issued under sub-section (2), shall produce the permit for inspection whenever called upon to do so by any officer of the Highway Administration and shall, on the expiry of the permission granted under such permit, restore the portion of the Highway specified in the permit in such condition as it was immediately before the issuing of such permit and deliver the possession of such portion to the Highway Administration.

(5) The Highway Administration or the officer issuing the permit under sub-section (2) shall maintain a complete record of all such permits issued, and shall also ensure in every case at the expiration of the period up to which the permission under a permit is granted under that sub-section that the possession of the portion of the Highway in respect of which such permission was granted has been delivered to the Highway Administration.”

19.It is also relevant to extract the provision under Section 25 of the Control of National Highways (Land and Traffic) Act, 2002, which deals with the grant of lease or licence of Highway land for temporary use hereunder:

“25. Grant of lease or licence of highway land for temporary use:-



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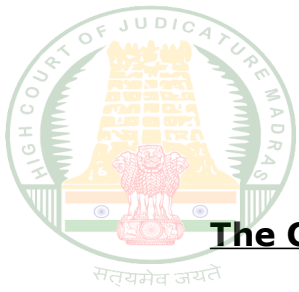
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The Highway Administration or the officer authorised by such Administration in this behalf may, having regard to the safety and convenience of traffic and subject to such conditions as may be prescribed and on payment of prescribed rent or other charges, grant lease or licence of highway land to a person for temporary use: Provided that no such lease shall be valid for more than five years at a time from the date on which such lease has been granted unless renewed by the Highway Administration or such officer.”

Thus, it is clear that the Highway administration can grant a lease or licence for the Highways Land to a person for temporary use. It does not provide any licence or permission to erect any permanent structure such as flagpole.

20.Further Section 26 of the Control of National Highways (Land and Traffic) Act, 2002 deals with the removal of unauthorized occupation and Section 27 of the Control of National Highways (Land and Traffic) Act, 2002 deals with recovery of cost of removal of unauthorized occupation and fine imposed.

21. Therefore, no provision under the Control of National Highways (Land and Traffic) Act, 2002 provides permission/licence or lease to erect any permanent flagpole by the political parties or any other organizations.



The Chennai City Municipal Corporation Act, 1919:

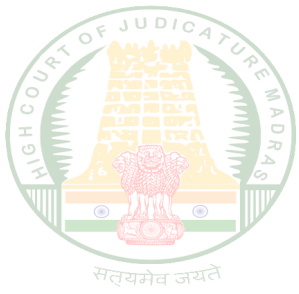
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22.The provisions under Sections 220 and 223 of the Chennai City Municipal Corporation Act, 1919, deal with the Prohibition against obstructions in streets and power to allow certain projections and erections and it is relevant to extract the same hereunder:

*“220. Prohibition against obstructions in streets.—
No one shall build any wall or erect any fence or other
5[obstruction or projection or make any encroachment] in
or over any street 6[or any public place, the control of
which is vested in the corporation] except as hereinafter
provided.*

*223. Power to allow certain projections and
erections.—(1) The Commissioner may grant a licence,
subject to such conditions and restrictions as he may think
fit, to the owner or occupier of any premises—*

*(a) to put up or continue to have verandas,
balconies, sun-hades, weather frames and the like, to
project over a street. or (b) in streets in which the
construction of arcades has been sanctioned by the
council, to put up or continue to have an arcade, or to
construct or to continue to have any step or drain-
covering necessary for access to the premises].*



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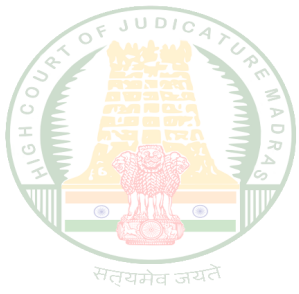
(2) With the concurrence of the commissioner of police, the commissioner may grant a licence. Subject to such conditions and restrictions as he may think, fit, for any temporary construction in any street or in any public place, the control of which is vested in the corporation.

(3) No licence shall be granted under sub-section (1) if the projection or construction is likely to be injurious to health or cause public inconvenience or otherwise materially interfere or result in material interference with the use of the road as such.

(4) On the expiry of any period for which a licence has been granted under this or after due communication of an order of suspension or revocation of such licence, the commissioner may, without notice, cause any projection or construction put up under sub-section (1) or (2) to be removed, and the cost of so doing shall be recoverable in the manner provided in section 387 from the person to whom the licence was granted.

1[(5) The council shall have power to lease road sides and street margin vested in the corporation for occupation on such terms and conditions and the such period as it may fix :

Provided that no such lease for any term exceeding three years shall be valid unless the sanction of the State Government therefore shall have been first obtained :



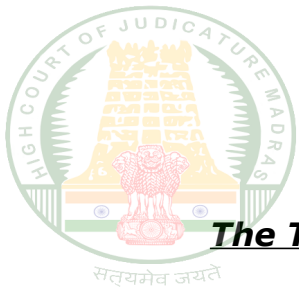
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Provided further that if the State Government consider that any occupation of a road side or street margin under a lease granted by the council under this section is likely to be injurious to health or cause public inconvenience or otherwise materially interfere with the use of the road side or street margin as such, the State Government may direct the council to cancel or modify the lease and the council shall thereupon cancel or modify the lease accordingly.]”

23.The Chennai City Municipal Corporation Act, 1919 also does not provide any provision to grant licence or permission to erect permanent flagpole in the land owned by the Chennai City Municipal Corporation. It provides power to grant of licence to put up or continue to have some structures projecting over the street that too with conditions such as without causing any public inconvenience, injurious to health, otherwise materially interfere with the use of the roadside or street margins. Insofar as the Hoardings, Advertisements, Elections or other things can be permitted on payment of fee as may be prescribed by the regulations.



The Tamil Nadu District Municipalities Act, 1920:

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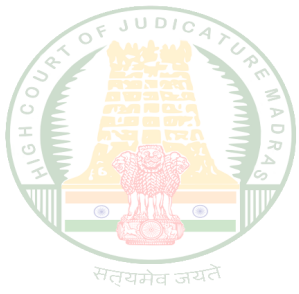
24.It is also relevant to rely upon the provisions under Sections 180, 182, 183 and 186 of the Tamil Nadu District Municipalities Act, 1920 hereunder:

"180. Prohibition against obstructions in or over streets .—

No one shall build any wall or erect any fence or other obstruction, or projection, or make any encroachment in or over any street, except as hereinafter provided.

182. Removal of encroachments .— (1) The 1 [Executive Authority] may, by notice, require the owner or occupier of any premises to remove or alter any projection, encroachment or obstruction (other than a door, gate, bar or ground-floor window) situated against or in front of such premises and in or over any street.

(2) If the owner or occupier of the premises proves that any such projection, encroachment or obstruction has existed for a period sufficient under the law of limitation to give any person a prescriptive title thereto or that it was erected or made with the permission or licence of any municipal authority duly empowered in that behalf, and that the period, if any, for which the permission or licence is



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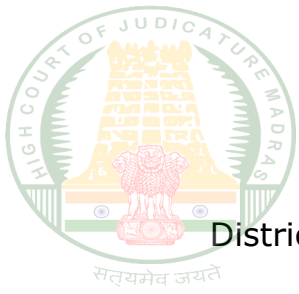
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valid has not expired, the Municipal Council shall make reasonable compensation to every person who suffers damage by the removal or alteration of the same.

183. Power to allow certain projections and erections .— (1) The Council may grant a licence, subject to such conditions and restrictions as it may think fit, to the owner or occupier of any premises to put up verandas, balconies, sunshades, weather-frames and the like, to project over a street, or in streets in which the construction of arcades has been sanctioned by the Council, to put up an arcade; or to construct any step or drain-covering necessary for access to the premises.

186. Prohibition against making holes and causing obstruction .—(1) No person shall make a hole or cause any obstruction in any street, unless, he previously obtains the permission of the 1 [Executive Authority] and complies with such conditions as that officer may impose. (2) When such permission is granted, such person shall, at his own expense., cause such hole or obstruction to be sufficiently fenced and enclosed until the hole or obstruction is filled up or removed and shall cause such hole or obstruction to be sufficiently lighted during the night.

Accordingly, no one shall build any wall or erect any fence or other obstruction or projection or make any encroachment in or over any street with certain exceptions. Section 186 of the Tamil Nadu



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District Municipalities Act, 1920, is also clear that no person shall make a hole or cause any obstruction in any street without any previous permission.

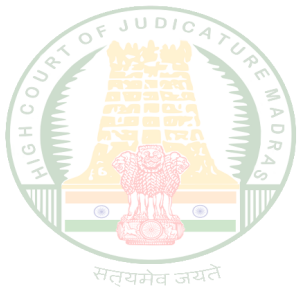
25. Therefore, the Tamil Nadu District Municipalities Act, 1920 also does not provide any provision to grant permission or licence to erect permanent flagpoles of any political parties or organizations in the land owned by the Municipalities.

The Tamil Nadu Panchayats Act, 1994:

26. Further, it is relevant to rely upon the provision under Section 220 of the Tamil Nadu Panchayats Act, 1994 hereunder:

“220. General provisions regarding licence and permissions:

(1) Save as otherwise expressly provided in or may be prescribed under this Act, every application for any licence or permission under this Act or any rule, by-law or regulation made thereunder, or for the renewal thereof, shall be made not less than thirty and not more than ninety days before the earliest date with effect from which, or the commencement of the period (being a year or such less period as is mentioned in the application) for which the licence or permission is required.



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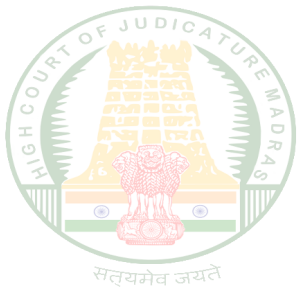
(2) *Save as aforesaid, for every such licence or permission, fees may be charged on such units and at such rates as may be fixed by the panchayat provided that the rates shall not exceed the maximum, if any, prescribed.*

(3) *Save as aforesaid, if orders on an application for any such licence or permission are not communicated to the applicant within thirty days or such longer period as may be prescribed in any class of cases after the receipt of the application by the executive authority of the village panchayat or the commissioner or the chief executive officer. The application shall be deemed to have been allowed for the period, if any, for which it would have been ordinarily allowed and subject to the law, rules, by-laws and regulations and all conditions ordinarily imposed.*

(4) *The acceptance of the pre-payment of the fee for any such licence or permission shall not entitle the person making such pre-payment to the licence or permission, but only to a refund of the fee in case of refusal of the licence or permission.*

(5) *If an act, for which any such licence or permission is necessary is done without such licence or permission, or in a manner inconsistent with the terms of the licence or permission obtained, then-*

(a) *the executive authority of the village panchayat or the commissioner or the chief executive officer may by notice require the person so doing such act to alter, remove, or as far as practicable restore to its original state, the whole, or any part of any property, movable or immovable, public or private affected thereby, within a time to be specified in the notice; and further*



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(b) if no penalty has been specially provided in this Act for so doing such act the person so doing it shall be punishable with fine not exceeding fifty rupees for such offence.

(6) Whenever any person is convicted of an offence in respect of the failure to obtain any such licence or permission, the Magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the panchayat the amount of the fee chargeable for the licence or permission, and may, in his discretion, also recover summarily and pay over to the panchayat such amount, if any as he may fix as the costs of the prosecution.

Explanation:- The recovery of the fee for a licence or permission under this subsection shall not entitle the person convicted to the licence or permission.”

27. Therefore, the Tamil Nadu Panchayats Act, 1994 also does not provide any permission or licence to erect permanent flagpoles of any political parties or organizations.

The Tamil Nadu Panchayats (Prohibition against obstruction in or over Public Roads, removal of encroachments, etc.,) Rules, 2000:

28. It is relevant to extract the provision under Rule 15 of the Tamil Nadu Panchayats (Prohibition against obstruction in or



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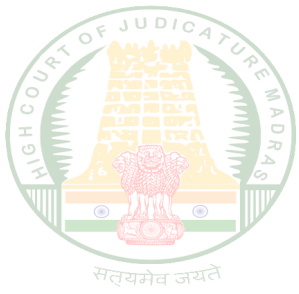
over Public Roads, removal of encroachments, etc.,) Rules, 2000,
hereunder:

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“15. Restriction on making hole, etc., on roads,

(1) The Village Panchayat or Panchayat Union Council shall earmark certain places with ready made holes for erecting poles in any public road vested with them. (2) No person shall make a hole, or cause any obstruction in any public road other than these places specified in sub-rule (1) unless he previously obtains the permission of the Executive Authority or Commissioner and complies with such conditions as the Executive Authority or Commissioner may impose.

(3) When such permission is granted, such person shall, at his own expense, cause such hole or obstruction to be sufficiently fenced and enclosed until the hole or obstruction is filled up or removed and shall cause such hole or obstruction to be sufficiently lighted during the night. (4) If any person contravenes the provisions of this rule, the Executive Authority or Commissioner shall fill up the hole or remove the obstruction or cause the hole or obstruction to be lighted, as the case may be, and may free cover the cost of so doing from such person.”



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29. Therefore, the Tamil Nadu Panchayats

(Prohibition against obstruction in or over Public Roads, removal of encroachments, etc.,) Rules, 2000 also does not provide any permission or licence to erect permanent flagpole.

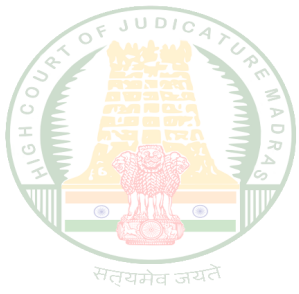
The Tamil Nadu Highways Rules, 2003:

30.As per Section 26(2) of the Tamil Nadu Highways Act, 2001, the temporary structure can be permitted to be erected by following the Tamil Nadu Highways Rules, 2003. Rules 6 to 9 of the Tamil Nadu Highways Rules, 2003 are extracted hereunder:

“6. Permission to occupy highway land:-

Permission granted by the Highways Authority under sub-section (2) of section 26 shall be in Form 'A'.

7.Conditions subject to which permission may be granted under sub-section (2) of section 26:- Permission under sub section(2) of section 26 shall be granted subject to the following conditions:---



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(i) The structure to be erected or work to be carried out shall be so executed as not to interfere with traffic on the highways or the highway drainage;

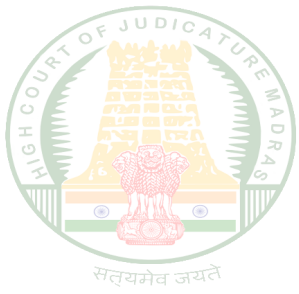
(ii) The structure shall be erected in conformity with the plan approved by the Highways Authority and shall not be altered or extended without the prior written permission of the Highways Authority. It shall not be used for any purpose other than the one for which permission is granted;

(iii) The structure shall be constructed and maintained to the satisfaction of the Highways Authority;

(iv) No trees on the highways land shall be removed, cut or damaged or highway accessories or materials removed or damaged without the prior written permission of the Highways Authority and on payment of compensation therefor, as determined by the Highways Authority;

(v) The applicant shall be solely liable for any loss or injury sustained by any person or property as a result of any carelessness negligence or misconduct of the applicant or any of his employees in the erection, setting up, repair or use of the structure on or overhanging on the highway land;

(vi) The applicant shall pay rent for the occupation of or encroachment on a highway within the highway boundaries at the rates indicated in the schedule;



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(vii) *The applicant shall be liable to pay all taxes, levies or assessments payable to Government or any local authority in respect of the highway land occupied or structure constructed or projected thereon;*

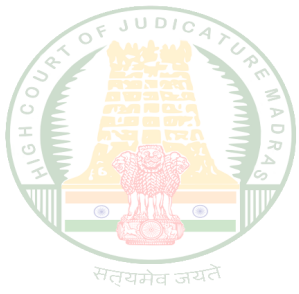
(viii) *The applicant shall deposit by way of security with the Highway Authority such amount as may be fixed by the Highways Authority which will be liable for forfeiture in case of default in the payment of rent and other charges payable to Government or contravention of any of the conditions subject to which the permission is granted;*

(ix) *On the expiry of the period for which the permission is granted, the land shall be vacated and restored to its original condition and handed over to the Highways Authority;*

(x) *The permission shall not be transferred to any other person without the prior written permission of the Highways Authority.*

8. *Rent to be charged for occupation of Highway land:- The Highways Authority shall charge rent for occupation of or encroachment on a highway within the highway boundaries permitted under section 26 at the rates specified in the Table in the Schedule.*

9. *Recovery of cost of removal of encroachment:- Where the cost of the removal of encroachment or the cost*



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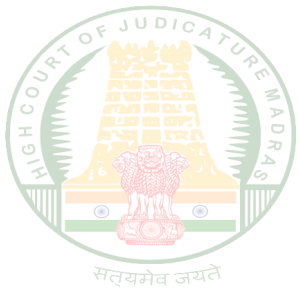


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of any protective work carried out in respect of any encroachment is not paid, the cost shall be recovered by disposing of the materials seized, by public auction.”

Thus, it is clear that even for temporary structure by way of erecting flagpoles during political party meetings, conferences, procession, dharna etc., the respective parties have to pay rent for the occupation of or encroachment on the Highway at the rates indicated in the schedule of the Tamil Nadu Highways Rules, 2003. On expiry of the period for which permission is granted, the land shall be vacated and restored to its original condition and handed over to the Highways authority.

31. Therefore, no law permits to grant licence or permission to erect permanent flagpole in public places and the land belongs to respective Departments such as National Highways, State Highways, Corporations, Municipalities and Local Bodies. Even then, the authorities concerned without any jurisdiction or power granted permission/licence to erect flagpoles of respective political parties and other organizations in the public place as well as the land belonged to the respective Departments permanently.

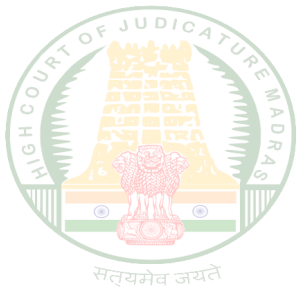


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32. On perusal of the above statutory provisions, it would be clear that Section 26 of the Tamil Nadu Highways Act, 2001 permits to grant permission to put up structure temporary in nature that too considering the safety and convenience of traffic with the concurrence of the concerned District Collector for rent. But the authorities concerned now grant permission/licence to erect permanent flagpoles that too without collecting any rent in public places. As a result, pedestrians as well as road users are put to grave risk and peril. In the event of those flagpoles and other temporary constructions likely to fall down, ultimately, it may be the duty of the State to compensate them without putting any liability and responsibility to the violators.

33. This Court dumped with the Writ Petitions claiming compensation including the person who suffered injuries/fatal due to falling down of flex board, hoardings and structure made adjacent to the road. Therefore, it is for the authorities concerned to ensure that no flagpoles are erected in public places permanently since no law provides any provision to the authorities to grant permission or licence to erect flagpoles by any political parties or organizations.



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34.Further, during the general election for the Lok Sabha, the Election Commission of India repeatedly issued various directions to regulate the erection of flagpoles on the road margin especially on the platforms or arches etc. However, those directions were complied with for time being and thereafter, the authorities concerned failed to comply with the directions. The Hon'ble Division Bench of this Court, while pending the Public Interest Litigation Writ Petition in **W.P.No.17768 of 2016, dated 02.04.2019 [A.Radhakrishnan Vs. Chief Electoral Officer, Secretary to Government and others]**, issued various directions and monitored the compliance till passing of the final order. The Division Bench of this Court also recorded the compliance report thereby removing the unauthorizedly erected flagpoles of the political parties and other organizations. However, as discussed supra, no law provides any provision to grant permission or licence to erect permanent flagpole to the authorities. Under the caption of 'Defacement of Private Places', the Election Commission of India issued direction that subject to any restrictions under any local law or any Court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, buntings flags, cut-outs, on their own property, provided they do so on their own volition, voluntarily and without any pressure from any party,



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organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else.

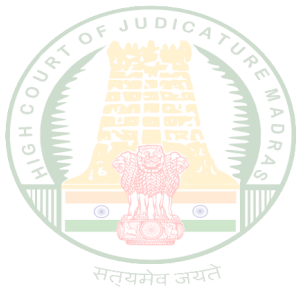
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35.After considering all these issues, the Election Commission of India issued the following directions to be followed by the political parties, candidates, individuals and organizations etc., during the election period:

"Defacement of Public Places:

4 (a) No wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted on any Government premise (including civil structures therein). For this purpose a Government premise would include any Govt. office and the campus wherein the office building is situated.

(b) If the local law expressly permits or provides for writing of slogans, displaying poster, etc., or erecting cut-outs, hoardings, banners, political advertisement, etc., in any public place (as against a Govt. premise) on payment or otherwise, this may be allowed strictly in accordance with the relevant provisions of the law and subject to Court orders, if any on this subject. It should be ensured that any such place is not dominated/monopolized



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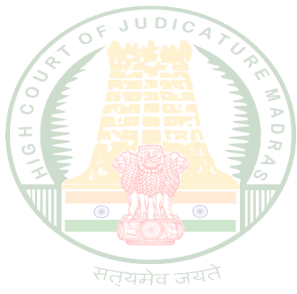


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by any particular party(ies) or candidate(s). All parties and candidates should be provided equal opportunity in this regard.

(c) If there is a specifically earmarked place provided for displaying advertisements in a public place, e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through the municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period.

Defacement of Private Places 5. (a) In the States where there is no local law on the subject, and subject to the restrictions under the law where there is a law, temporary and easily removable advertisement materials, such as flags and banners may be put up in private premises with the voluntary permission of the occupant. The permission should be an act of free will and not extracted by any pressure or threat. Such banner or flag should not create any nuisance to others. Photo-copy of the voluntary permission in writing obtained in this connection should be submitted to the Returning Officer within 3 days of putting up the flags and banners in such cases in the manner prescribed in sub para(c) below.



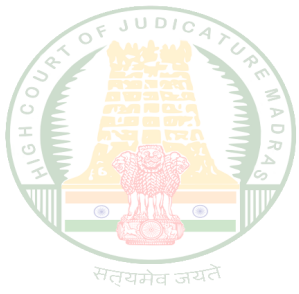
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(b) If the local law does not expressly permit wall writing, pasting of poster, and similar other permanent/semi-permanent defacement which is not easily removable, the same shall not be resorted to under any circumstances, even on the pretext of having obtained the consent of the owner of the property. This will also apply in the states where there is no local law on the subject of prevention of defacement of property.

(c) Where the local law expressly permits wall writings and pasting of posters, putting up hoardings, banners, etc. on private premises with the owner's permission, the contesting candidates or the political parties concerned shall obtain prior written permission from the owner of the property and submit photocopies of the same within 3 days to the Returning Officer or an officer designated by him for the purpose, together with a statement in the enclosed proforma (marked as Annexure-2). The statement in such cases and in the cases mentioned in sub-para (a) above should clearly mention therein the name and address of the owner of the property from whom such permission has been obtained together with expenditure incurred or likely to be incurred for the purpose. Nothing inflammatory or likely to incite disaffection amongst communities shall be permissible in such writings/display. The expenditure incurred in this mode on specific campaign of candidate(s) shall be added to the election expenditure made by the candidate. Expenditure incurred on exclusive campaign for a party



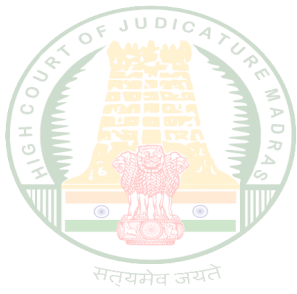
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without indicating any candidate shall not be added to candidate's expenditure. The contesting candidate shall furnish such information village/locality/town-wise, to the Returning Officer, or the authorized officer within 3 days of obtaining the requisite permission, for easy checking by the Returning Officer or the Election Observer or any officer connected with the conduct of elections.

(d) Subject to any restrictions under any local law or any court orders in force, the political parties, candidates, their agents, workers and supporters may put up banners, buntings flags, cut-outs, on their own property, provided they do so of their own volition, voluntarily and without any pressure from any party, organization or person, and provided further that these do not cause any inconvenience in any manner to anyone else. If such display of banners, flags etc. aims to solicit vote for any particular candidate, then the provisions of Section 171H of the IPC would be attracted and would have to be followed. Section 171H of the IPC stipulates that whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees: Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from



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the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.”

The above directions were complied with during the election. However, the erection of flagpoles by political parties and other organizations is not prohibited so far, although no law provided or provision to grant permission or licence to erect flagpoles by any political parties or other organizations.

36.Thus, it is clear that no permission or licence can be granted by any authority to erect a flagpole in public places or in private places. Therefore, the erection of flagpoles is unauthorized and illegal by any political parties and organizations. Therefore, all the flagpoles erected all over Tamil Nadu in the rural or urban areas have to be removed forthwith.

37.Since all public streets and roads vest with the State or the local bodies, as the case may be, as trustees on behalf of the public. It is reported in **AIR 1953 Madras 279** in the case of **C.S.S.Motor Service, Tenkasi Vs. The State of Madras,**

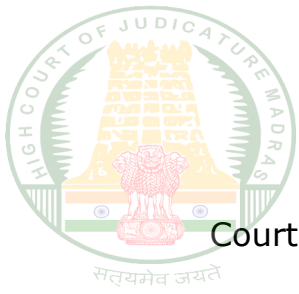


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represented by the Secretary to the Government of Madras,

Home Department, wherein it is held that "all public streets and roads vest in the State but that the State holds them as trustee on behalf of the public. The members of the public are entitled as beneficiaries to use them as a matter of right and this right is limited only by the similar rights possessed by every other citizen to use the pathways. The State as trustees on behalf of the public is entitled to impose all such limitations on the character and extent of the user as may be requisite for protecting the rights of the public generally". Therefore, any authority has no power to grant permission to anybody to construct anything permanent in public places.

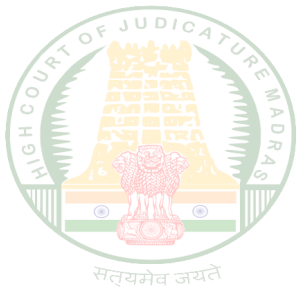
38.Further, the footpaths or pavements or public properties are intended to serve the convenience of the general public. They are not laid for private use and indeed, they are used for a private purpose frustrates the very object for which they are carved out from portions of public streets. The main reason for laying out pavements is to ensure that the pedestrians are able to go with a reasonable measure of safety and security. Therefore, no one has right to make use of public property for a private purpose without the requisite authorization, as held by the Hon'ble Supreme



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Court of India in the case of ***Olga Tellis Vs. Bombay Municipal Corporation*** reported in **(1985) 3 SCC 545** while considering the rights of pavement dwellers, eviction and removal whether violated Articles 19(1)(e) and 21 of the Constitution of India.

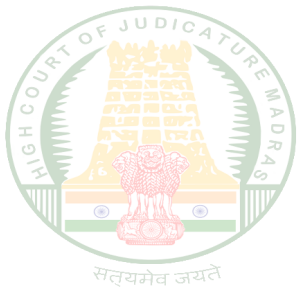
39.The said Judgment is clearly applicable to the case on hand. Any public place such as corner of the street, pavement, junction of the road, junction, bus stop and other public use places are meant for the usage of general public. Therefore, no one has any right to erect any flagpoles by obstructing public users. That apart, there are several criminal cases registered due to the erection of flagpoles of respective political parties while celebrating their leader's birthday, death anniversary, during election, celebration of their elected members of the Legislative Assembly and Lok Sabha, while choosing the place for erection of their flagpoles and with regard to their flagpoles height. All the cases are pending for investigation on the file of its respective police stations. Therefore, the authorities themselves granted permission to erect flagpoles that too without any power/jurisdiction and it led to all problems including criminal cases.



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40.Further, the Hon'ble Supreme Court of India dealt with the issue of encroachment of pavements of roads, the rights of the encroachers in the case of **Ahamedabad Municipal Corporation Vs. Nawab Khan Gulab Khan** reported in (1997) **11 SCC 121** and the relevant paragraphs 8, 10 & 22 are extracted hereunder:

"8. It is for the court to decide in exercise of its constitutional power of judicial review whether the deprivation of life or personal liberty in a given case is by procedure which is reasonable, fair and just or it is otherwise. Footpath, street or pavement are public property which are intended to serve the convenience of the general public. They are not laid for private use and indeed, their use for a private purpose frustrates the very object for which they are carved out from portions of public roads. The main reason for laying out pavements is to ensure that the pedestrians are able to go about their daily affairs with a reasonable measure of safety and security. That facility, which has matured into a right of the pedestrians, cannot be set at naught by allowing encroachments to be made on the pavements. The claim of the pavement dwellers to construct huts on the pavement or road is a permanent obstruction to free passage of traffic and pedestrians' safety and security. Therefore, it would be impermissible to permit or to make use of the pavement for private purpose. They should allow passing and repassing by the pedestrians. No one has a right to make use of a public



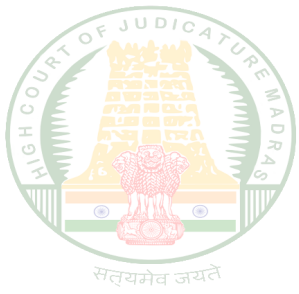
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property for their private purpose without the requisite authorisation from the competent authority. It would, therefore, be but the duty of the competent authority to remove encroachments on the pavement or footpath of the public street obstructing free flow of traffic or passing or repassing by the pedestrians.

10. The Constitution does not put an absolute embargo on the deprivation of life or personal liberty but such a deprivation must be according to the procedure, in the given circumstances, fair and reasonable. To become fair, just and reasonable, it would not be enough that the procedure prescribed in law is a formality. It must be pragmatic and realistic to meet the given fact-situation. No inflexible rule of hearing and due application of mind can be insisted upon in every or all cases. Each case depends upon its own backdrop. The removal of encroachment needs urgent action. But in this behalf what requires to be done by the competent authority is to ensure constant vigil on encroachment of the public places. Sooner the encroachment is removed when sighted, better would be the facilities or convenience for passing or repassing of the pedestrians on the pavements or footpaths facilitating free flow of regulated traffic on the road or use of public places. On the contrary, the longer the delay, the greater will be the danger of permitting the encroachers claiming semblance of right to obstruct removal of the encroachment. If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property



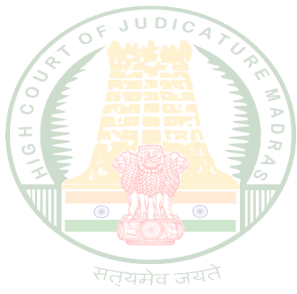
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and claim the procedure of opportunity of hearing which would be a tedious and timeconsuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment voluntarily by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed. Thus considered, we hold that the action taken by the appellant-Corporation is not violative of the principle of natural justice.

22. Empirical study of urban and rural population in India discloses that due to lack of civic facilities and means of livelihood people from rural areas constantly keep migrating to the urban areas resulting in mushroom growth of slums and encroachment of the pavements/footpaths etc. Every municipal corporation has statutory obligation to provide free flow of traffic and pedestrians' right to pass and repass freely and safely; as its concomitance, the corporation/municipality have statutory duty to have the encroachments removed. It would, therefore, be inexpedient to give any direction not to remove,



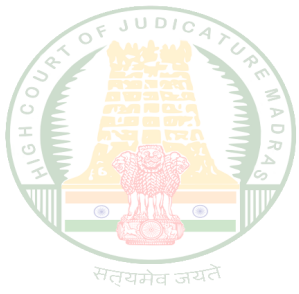
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or to allow the encroachments on the pavements or footpaths which is a constant source of unhygienic ecology, traffic hazards and is risk-prone to the lives of the pedestrians. It would, therefore, be necessary to permit the Corporation to exercise the statutory powers to prevent encroachment of the pavements/footpaths and to prevent construction thereon. As held earlier, the Corporation should always be vigilant and should not allow encroachments of the pavements and footpaths. As soon as they notice any encroachment they should forthwith take steps to have them removed and not allow them to settle down for a long time. It is stated in their affidavit that they are giving 21 days' notice before taking action for the ejectment of encroachers. That procedure, in our view, is a fair procedure and, therefore, the right to hearing before taking action for ejectment is not necessary in the fact-situation. But the Commissioner should ensure that everyone is served with a notice and as far as possible by personal service and if it is not possible for reasons to be recorded in the file, through affixture of the notice on the hutment, duly attested by two independent panchas. This procedure would avoid the dispute that they were not given opportunity; further prolongation of the encroachment and hazard to the traffic and safety of the pedestrians."

Therefore, the erection of flagpole is nothing but rank encroachment. The removal of encroachment needs urgent action by the concerned authorities.



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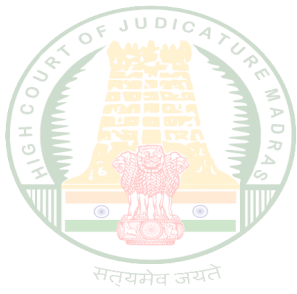
41.The Hon'ble Division Bench of this Court further held

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in **W.P.No.17768 of 2016, dated 02.04.2019**

[A.Radhakrishnan Vs. Chief Electoral Officer, Secretary to Government and others], which reads as follows:

“17. From the submissions and the status reports submitted by the 32 District Collectors in the State of Tamil Nadu, two flagpoles in Thiruvannamalai are not removed, as they were erected with the permission of the local body. Three poles are not removed, as there were covered by Court orders and all other flagpoles, erected without permission of the competent authorities, have been removed. It is alarming that as against several thousands of flag poles in the State only two poles have been erected with permission and the remaining three covered, by Court orders. Ever since action has been taken for removal of unauthorised poles, none appeared before the authorities or before us to contend, and substantiate that there is any valid permission for erection of such poles. Illegality in erection of poles without obtaining permission from the competent authorities, is per se apparent. Question to be considered on the prayer sought for is whether the illegality in erecting the poles, across the State, without permission from the competent authorities, whomsoever under the above Statutes, be allowed to be resurrected, after the declaration of elections. Nobody has a right to encroach upon properties, which vest with the Statutory authorities.



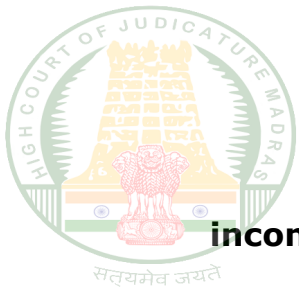
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18. Measures taken during elections, on the basis of Code of Conduct, alone would not serve the purpose, in the light of the statutory provisions extracted supra. There should be statutory compliance, in the matter of erection of poles. So also discharge of statutory duties cast upon the authorities not to permit erection of poles without adherence to the provisions of the Statute. Departure from law should not be permitted. Any encroachment on a public property, road, street, etc., would eventually lead to congestion of traffic, inconvenience to the user of roads, streets and such other places vested with the authorities. Object of the statutory provisions quoted supra, is not to allow any unauthorised occupation of such places and in the case on hand, erection of flag poles. Local Bodies, Government, and Highways Department are duty bound to initiate antiencroachment measures and continue to do so. At this juncture, we deem it to observe that it is endeavour of this Court is to state there can be poles, but only with the permission of the competent authorities.”

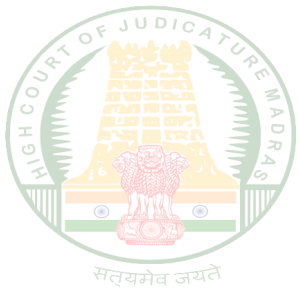
42.Thus, it is clear that the authorities concerned should not permit the erection of poles permanently without adherence to the provisions of the statute. Hence, the erection of flagpoles with permission or without permission amounts to clear encroachment on public property, roads, streets etc. It leads to congestion of traffic and



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inconvenience to the users of roads, streets and other places vested with the authorities. Further, there is law and order problem, while celebrating birthday, death anniversary of eminent leaders by hoisting flag by political parties and also blocking the entire road traffic and causing inconvenience to general public. There is competition between the political parties and other organizations in respect of their flagpost height. They want to erect their respective flagpole higher than the other poles. In this regard, 114 F.I.Rs are pending for investigation on the file of various police stations in all over Tamil Nadu. Therefore, they should not be permitted to erect their flagpole permanently in the public places. When no act provides any permission/licence to erect flagpole permanently in the public place and land belongs to National Highways, State Highways, Corporations, Municipalities and Local Bodies, the police personnel and revenue department have no power/jurisdiction to issue No Objection Certificate to erect permanent flagpole.

43. In view of the above, this Court issues the following directions:

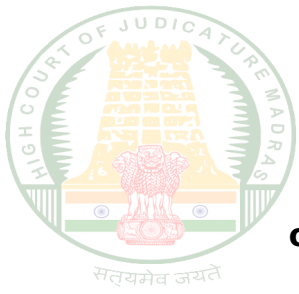


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(i) All the political parties and all organizations such as Community, Religion, Association etc., are directed to remove their flagpoles which are erected permanently in all over Tamil Nadu in the public places and land belongs to the National Highways, State Highways, Corporations, Municipalities, Local Bodies and other Departments, within a period of twelve weeks from today, failing which, the authorities concerned are directed to remove the flagpoles by issuing two weeks notice and in accordance with law. After removal of flagpoles, the authorities concerned are directed to recover the cost of removal of flagpoles from the respective political parties.

(ii) All the authorities concerned shall not grant any permission to erect flagpoles permanently in the public places and land belongs to the National Highways, State Highways, Corporations, Municipalities, Local Bodies and other Departments by the political parties and



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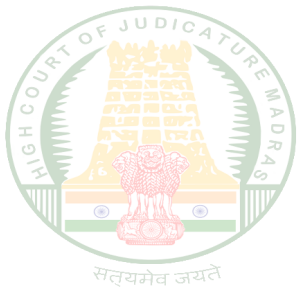


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other organizations such as Community, Religion or any Association in the public place and the land owned by the Department of National Highways, State Highways, Corporation, Municipality and Local Bodies.

(iii) The political parties and other organizations are permitted to erect their permanent flagpoles in their own land that too after obtaining necessary permission from the authority concerned. In this regard, the State Government is directed to frame Rules for erection of flagpoles in the private land.

(iv) The authorities concerned can permit the political parties to erect their flagpoles temporarily without causing any damage to the land during their meetings, election campaign, conferences, procession, dharna and functions etc., on payment of rent in advance, as may be prescribed, in accordance with law.



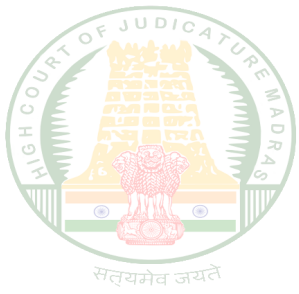
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(v) The authorities must ensure that after the period of permission/licence to erect temporary flagpole, the person who was granted permission/licence shall restore the public places to its original position by cleaning and filling up the holes, if any. If any damage caused, the cost to be paid to the concerned authorities.

(vi) The Head of the Department of concerned authorities and all District Collectors must ensure that the concerned authorities shall comply with the above directions and monitor from time to time.

(vii) The Registry is directed to circulate this order to all the District Collectors for strict compliance. The Chief Secretary shall ensure compliance of this order.



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44.In view of the above directions, this Court finds no infirmity or illegality in the order passed by the second respondent, dated 29.11.2024 and accordingly, **W.P(MD)No.29035 of 2024 is dismissed.**

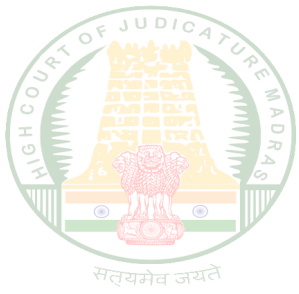
45.In view of the above directions, the direction sought for in W.P(MD)Nos.29035 & 30354 of 2024 cannot be granted and accordingly, **W.P(MD)Nos.29035 & 30354 of 2024 are also dismissed.** There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

27.01.2025

NCC : Yes
Index : Yes
Internet : Yes
ps

Note:- (i) Issue Order Copy on or before 27.01.2025.

(ii) The Registry is directed to circulate this order to all the District Collectors for strict compliance. The Chief Secretary shall ensure compliance of this order.



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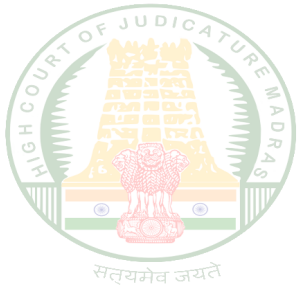
Copy To:

**1.The Chief Secretary,
Government of Tamil Nadu,
Fort St. George,
Secretariat,
Chennai.**

2.All the District Collectors.

To

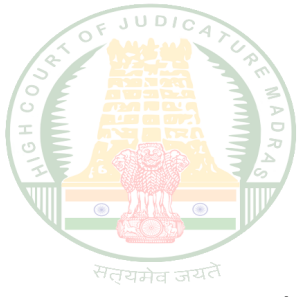
- 1.The Divisional Engineer,
Highways Department,
Construction and Maintenance,
Near Thamarai Thotti,
K.Pudur, Madurai - 625 002.
- 2.The Assistant Divisional Engineer,
Highways Department,
Construction and Maintenance,
Sub-Division - Madurai South,
Near District Court,
Madurai - 625 002.
- 3.The Assistant Engineer,
Highways Department,
Construction and Maintenance,
Sub-Division Madurai South,
Near District Court,
Madurai - 625 002.
- 4.The Tahsildar,
Thiruparankundram Taluk,
Madurai.
- 5.The Assistant Commissioner of Police,
Thidir Nagar Circle,
S.S.Colony,
Madurai - 625 016.



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- 6.The Inspector of Police,
C-3, Subramaniyapuram Police Station,
Madurai - 625 003.
- 7.The Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai.
- 8.The District Revenue Officer,
Collectorate Campus,
Madurai.
- 9.The Revenue Divisional Officer,
Madurai North Division,
Madurai District.
- 10.The Tahsildar,
Madurai North Taluk Office,
Madurai District.
- 11.The Assistant Commissioner,
Madurai Corporation,
Madurai North Division No.II,
Race Course Road,
Madurai.
- 12.The Assistant Commissioner of Police,
Sellur Circle,
Madurai District.



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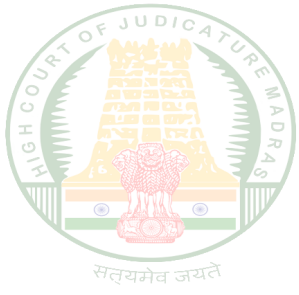
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13.The Inspector of Police,
D3 Koodal Nagar Police Station,
Madurai.

14.The District Collector,
Madurai District,
Madurai.

15.The Tahsildar,
Taluk Office,
Periayur Taluk,
Madurai District.

16.The Inspector of Police,
Saptur Police Station,
Madurai District.



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G.K.ILANTHIRAIYAN, J.

ps

Pre-Delivery Order made in
W.P(MD)Nos.29035, 29217 & 30354 of 2024

27.01.2025