

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

**W.P. No.23140 of 2014
and
M.P.Nos. 1 and 2 of 2014**

M.Veeraraghavan

...Petitioner

Vs.

1.The Home Secretary
Government of Tamilnadu
Secretariat
Fort St. George,
Chennai 600 009.

2.The District Collector,
Vellore District,
Vellore.

3.The Tahsildar,
Office of the Tahsildar,
Arakonam Taluk
Vellore District.

4.The Village Panchayat President,
Kainoor Village Panchayat
Arakonam Taluk
Vellore District.

...Respondents

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Prayer: Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the entire records connected with the impugned notice issued by the 3rd respondent in Na.Ka.P1/Pa.Ve.154/2014 dated 21.08.2014 and quash the same.

For Petitioner : Mr.P.S.Amal Raj

For Respondents : Mr.K.M.D.Muhilan
Government Advocate

ORDER

The Writ of Certiorari has been instituted to quash the notice issued by the third respondent in proceedings dated 21.08.2014. The notice impugned contemplates that any violation of the Rules and guidelines issued for maintenance of Meikkal poramboke and without getting any permission from the competent authority, the petitioner along with some persons erected a statue of Dr.B.R.Ambedkar. Under those circumstances, the authority competent directed for the removal of the said statue.

2. The petitioner states that he is residing in Kainoor Kandigai Village, Arakkonam Taluk and is a practising Advocate and a law abiding citizen. The petitioner claims himself as a social activist. A resolution was passed to install Dr.B.R.Ambedkar statue in the Kainoor Kandigai Village in

the panchayat meeting headed by the Village Panchayat President. In view of the fact that the Village Panchayat has passed a resolution and erected a statue, the order impugned is perverse and is liable to be set aside.

3. The learned counsel for the petitioner made a submission that the said statue of the great leader is not affected the public at large in that locality and therefore, the said statue must be allowed to remain in the same place.

4. Per contra, the learned Government counsel appearing on behalf of the respondents has stated that the statue is erected in the Meikkal poramboke and without obtaining permission from the competent authorities. Thus, it is not only in violation of Statute and Rules, but in violation of the directions issued by the Hon'ble Supreme Court of India as well as the Hon'ble Division Bench of the High Court of Madras. Thus, there is no infirmity as such in respect of the order impugned passed by the authorities.

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5. The learned Government counsel appearing on behalf of the respondents reiterated that the State Government has not granted any permission for construction of Statues in any form or structures in public places

including the Highways and Roads, after an interim order passed by the Hon'ble Supreme Court of India in the year 2012. Therefore, any construction of statue, structures or buildings in the Government property Meikkal poramboke or otherwise is not authorized or permitted by the Government and in such circumstances, the authorities competent have to issue notice and initiate appropriate action for the purpose of replacement or removal, as the case may be, in order to uphold the provisions of the Statute and in implementation of the order passed by the Hon'ble Supreme Court of India.

6. The written instructions furnished by the Tahsildar, Arakkonam to the Government Pleader, High Court also reveals that the order impugned was passed pursuant to the orders of the Hon'ble Supreme Court of India in SLP (Civil) No.8519 of 2006 dated 18.01.2013. Thus, the authorities have no option but to implement the orders of the Hon'ble Supreme Court of India and therefore, there is no infirmity as such in respect of the order impugned. In the very same instructions, the Tahsildar has categorically stated that the said statue is the subject matter in the present writ petition has not been removed, in view of the interim order passed in the present writ petition. Thus, the authorities have not committed any lapses and they are vigilant in implementing the orders

of the Supreme Court as well as the Government guidelines and the Statutes in force. However, the irregularity committed by the petitioner in this regard cannot be condoned in violation of the orders of the Hon'ble Supreme Court of India. Thus, the writ petition is liable to be rejected.

7. The spirit of the judgment of the Hon'ble Supreme Court of India and the judgments of the Division Bench of the High Courts are relevant for the purpose of considering the issues of this nature. The issue raised is of public relevance as it causes concern to the public at large in our great nation.

8. The Hon'ble Division Bench of Madras High Court in W.P.No.1012 of 2010 delivered a judgment on 11.02.2010 in the case of ***T.Amirthalingam vs. State***, reported in ***(2010) 2 MLJ 1022***, wherein, the Court passed an order as follows: सत्यमेव जयते

“35. The first direction is that governments sanction should be obtained before installation of the statues, memorials, memorial arches and memorial pillars. This is with respect to the sanction to be obtained from the government. In this behalf, it would be desirable that the person, society or body of institutions desirous of erecting any such statue should make an application to the concerned District Collector for grant of

permission. The application must specify the location along with the sketch. It must also give details with respect to the survey numbers of the property. It would be desirable that the District Collector forwards the application to the Tahsildar of the Taluk as well as to the Inspector of Police of the concerned police station, who should obtain all necessary information and forward it to the District Collector. The Tahsildar may as well obtain the views of all persons concerned with the erection of the statue. The District Collector will then forward his report to the Home Secretary who should obtain the sanction of the government on the proposal. In no case the erection of the statue should be initiated or carried out without the prior sanction of the government in this behalf.

9. The Hon'ble Supreme Court passed an order on 18.01.2013 in Special Leave to Appeal (Civil) No(s).8519 of 2006, issued a direction stating that "henceforth, 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." The said order is to be implemented scrupulously in order to ensure free usage of public roads and places by the people at large.

10. The provisions of the Tamil Nadu Highways Act, 2001, categorically enumerates that such structures cannot be erected detrimental to

the public interest. Even encroachments made in public places / Government lands / Meikal Poromboke must be removed in a manner contemplated under the provisions of the Act. When the Government of Tamil Nadu enacted such a law, the said law is to be implemented scrupulously by the authorities competent.

11. The Hon'ble Supreme Court of India passed an order in the case of Union of India v. State of Gujarat and others in SLP (Civil) No.8519/2006 dated 18.01.2013. As per the said judgment of the Apex Court, 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. Obviously, this order shall not apply to installation of high mast lights, street lights or construction related to electrification, traffic, toll or for development and beautification of the streets, highways, roads etc. and relating to public utility and facilities. The direction shall apply to all States across the Country. The concerned Chief Secretary/Administrator of Union Territory shall ensure compliance of the above order. This being the order passed by the Apex Court of India, the issues sought to be considered keeping in mind the direct use and also the Statutes enacted by the Legislature.

12. This Court is duty bound to consider the constitutional principles and statutory provisions with reference to the issues raised. Let us consider the Statute in force governing the subject.

13. Tamil Nadu Highways Act 2001 (hereinafter referred to as 'the Act') would be relevant for the purpose of considering the issues. Section 2(3) of the Act defines as, “building, which includes -

(a) any erection of whatever material and in whatsoever manner constructed (including a farm building for agricultural purposes) and also includes plinths, doorsteps, wall (including compound walls and fences) and the like, or

(b) any structure on wheels or simply resting on the ground without foundation, or

(c) any tent, awning, pandal or any other structure used for human habitation or used for keeping vehicles or animals or storing any article or goods;

14. Section 2 (8) defines “Encroachment”. Sub Section 12 defines “Highway”. Chapter II deals with “Declaration of Highways, Highways Authorities and their powers and functions”, Section 3 of the Act contemplates

“Declaration of Roads, Ways or Lands as Highways”. Chapter V of the Act deals with “Prevention of unauthorised occupation of, and encroachment on, a highway and removal of encroachment”. Section 26 of the Act deals with “Prevention of unauthorised occupation of highways”. Accordingly, no person shall occupy or encroach on any highway within the highway boundaries. Section 27 of the Act confers “Power to cancel permission”. Section 28(2) of the Act enumerates “Prevention of Encroachment”. Sub-Section 2 of Section 28 unambiguously enumerates that the Highways authority or any person authorised by it in this behalf, may - (1) remove, without any notice, any movable temporary structure, enclosure, stall, booth, any article whatsoever hawked, exposed or displayed for sale or any other thing whatsoever by way of encroaching the highway or in any area where the construction or development of a highway is undertaken or proposed to be undertaken;

(2) remove any immovable structure, whether permanent or temporary in nature, encroaching the highway or in the area vested with Government under this Act, after issuing a show cause notice against such removal, returnable within a period of seven days from the date of receipt thereof.

15. As rightly pointed out by the learned Government Advocate for the respondents, Schedule 7, List -II – State List, entry 18 contemplates “Land”. Thus, the land, in which, such structures, statues, buildings are constructed, the said land belongs to the Government. Thus, the permission of the State Government is mandatory for erection of statues, construction of structures, buildings etc., By virtue of the constitutional power, the State enacted law, regulating the construction of structures either permanent or temporary under the Tamil Nadu Highways Act. Thus, obtaining a permission is mandatory.

16. However, the manner in which permissions are granted, refused or situation prevailing as of now and practice are of paramount importance, which creates concern for this Court to consider the issues raised in this writ petition. Though the law is in force, the implementation is undoubtedly lacking. This apart, the prevailing situation is also not in consonance with the provisions of the Act and the actions being initiated by the competent authorities are also not at the expected level as contemplated under the provisions of the various Statutes and judgments dealing with such issues.

17. Let us consider the prevailing situation across the State of Tamil Nadu in respect of erection of statues and its maintenance, which is the issue raised in the present writ petition.

18. Erection of statues were made at the whims and fancies of the political parties, communal, religious, linguistic, regional and sectional groups in various forms. No doubt, they are entitled to celebrate the glory of those leaders. But, while erecting a statue in a public place / Government lands / Meikal Poramboke, regulation is of paramount importance as ideas, ideologies and practices may differ from one group to another group. Unity in Diversity is the Indian Constitution's principles and perspectives, and the glory of our great Nation. This being the Constitutional mandate, the equality, non-discrimination, regulation, all these issues are of constitutional importance to preserve the Unity in Diversity principles and to march towards the vibrant democracy. In the event of allowing any particular sector or group to act in their own whimsical manner, undoubtedly, we are not honouring the constitutional philosophy and Ethos.

19. Common people are witnessing riots, law and order issues in the name of statue of the leaders across the State of Tamil Nadu on many occasions and frequently. The Birthday, Anniversary day are celebrated to glorify the leaders in such a manner, raising concern for the common people, who wish to lead their lives in a peaceful manner. It is the duty of the Government of the day to ensure that such peaceful living of the common man is not being affected at any circumstances because of such celebrations of the political parties, communal, religious, linguistic, regional and sectional groups or other groups. At no circumstances, leaders can be identified through their communities. Those leaders never taught of such ideas. They sacrificed their lives for the development and betterment of the society at large and no leader has made any attempt to adopt divisive principles in the name of caste / community / religion. Thus, identifying a leader through his / her community is undoubtedly opposed to constitutional principles and such concepts if developed, then it would affect the very image and reputation of the leaders. These groups cannot be allowed to disrepute the image, ideas, ideologies, philosophy of those leaders, who left those ideologies for the purpose of development of the society at large. Now these groups are attempting to convert the image of these leaders by attaching communal colour and thereby attempting to create hatredness amongst the

people. Such conduct and behaviour of any person, cannot be allowed and, such an attitude or conduct is not only unconstitutional, but disastrous to maintain Unity in Diversity and to reach the constitutional goal of vibrant democracy.

20. The political parties, communal, religious, linguistic, regional and sectional groups and other groups are erecting the statues in the centre of the roads and in public places / Government Lands / Meikal Poramboke lands, causing greatest concern to the free movement of the vehicles and to the people of that locality. They are not even maintaining such statues properly. In recent years, there are several incidents, where rival groups are damaging the statues of the leaders and causing disrespect. Such incidents are creating violence in that locality, hatredness amongst the people from various communities. If this kind of situation is allowed to continue, then the rights of the common people are infringed. Thus, an approach of the Government needs to be changed as the Government is the authority to initiate action against such happenings in the society.

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21. This apart, the statues of the leaders are erected in a competitive manner. If a particular community is having larger strength, they are making an

attempt to celebrate the leaders in a particular manner by erecting huge statues. If the community people are less in numbers, they are erecting their own leaders in a particular locality. If this kind of unhealthy competitions are allowed to continue, then we are not only committing unconstitutionality, but creating corrupt mind amongst the people, which would be detrimental to the development of our great Nation.

22. No one can deny such happenings, not only in the State of Tamil Nadu, but across the Country. A pragmatic approach is required to change the mindset of the people in this regard. The Government has to enforce the law, so as to change the mind of these groups and to ensure that the peaceful living and free movement of the people in public roads and places are ensured. Thus, implementation of law along with the constitutional spirit is of paramount importance to achieve the development in this perspective.

23. The Law makers inserted Article 51-A in the Constitution. It is emphasized that the fundamental duties, must be reminded of to every citizen. However, we are concerned about the right, forgetting the fundamental duties enunciated under the Constitution of India. Article 51-A contemplates it shall

be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India, to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. Therefore, it is the constitutional duty of every citizen to ensure that religious, linguistic, regional or sectional diversities are not permitted amongst the citizen.

24. No doubt, every political party has a right to celebrate the glory of the leaders. Every political party, communal, religious, linguistic, regional and sectional groups are entitled to respect and cherish the ideas, ideologies, philosophy, of the leaders. However, the practical happenings in the society is that, when a particular political party happens to be in power, they erect and maintain the statues of the leaders of their choice and neglect the maintenance of the statue of the other leaders. When the other party comes into power, they also continue to adopt the same practices. Political parties may have different ideas, ideologies, principles, etc., However, when they are elected into power, it is the constitutional duty of the Government of the day to ensure that the societal and public interest at large in consonance with the Constitution is

upheld and implemented. Thus, discrimination amongst the leader's statues by political parties, communal, religious, linguistic, regional and sectional groups are certainly not in consonance with the laws in force, more specifically, when such statues are erected in public places.

25. If the statues of those leaders are erected in a private places, it is their choice to celebrate in the manner they wish. However, if such statues are in public places, then it is the concern of the public at large. Every citizen has to borne in mind that a particular leader may be a tall leader for one group of people and may not be a leader at all in the perspective of the other group of people. One leader is celebrated by one group and the same leader may be criticized by another group. This exactly is the diversity and the fundamental right enshrined under the Constitution to every citizen. Respecting the rights of each citizen is the constitutional duty of every citizen of this Country. Thus, ideologies, ideas, principles may differ from person to person, political party to political party, communal groups to other groups. However, the unity and the consistency and respecting the rights of every citizen regarding the usage of public roads and its maintenance must be preserved at all circumstances in the interest of the development of our great Nation.

26. Common people are frustrated on many such occasions and they are bored of such happenings. People are lamenting on many occasions. They are prevented from leading their normal life in a peaceful manner, and the communal clashes are the greatest concern. It takes away many lives, and damage the private and public properties. If these are the consequences of these inconsistencies due to the illegal activities of few groups of people, it is the duty of the Government to regulate such illegalities and irregularities and to preserve the constitutional principles and mandates.

27. The Hon'ble Supreme Court in the case of ***Union of India and another Vs. State of Gujarat in Special Leave to Appeal (C).No(s).8519 of 2006 issued directions on 31.01.2018***, referring the order dated 29th September 2009 that in respect of the unauthorized construction of religious nature which has already taken place, the State Governments and the Union Territories shall review the same on case to case basis and take appropriate steps as expeditiously as possible. In view of the fact that affidavits filed by the respective State Governments were not satisfactory, the Apex Court of India held that it has become imperative to direct all the States and the Union

Territories to formulate comprehensive policy regarding the removal/relocation/ regularisation of the unauthorized construction within six weeks.

28. However, there is no information on record to establish that such actions were initiated. The Apex Court of India passed final orders, transmitting all the cases to the respective High Courts for consideration of the issues. Under these circumstances, this Court thought fit to consider the issues.

29. In spite of the orders of the Hon'ble Supreme Court of India, there is no effective process or its implementation is made, which resulted in continuance of such unrest situation in many sensitive localities, more specifically, when the celebrations are made by the political parties, communal, religious, linguistic, regional and sectional groups or other groups.

30. This issue in the opinion of this Court is continuing for several years, though the political parties both in ruling power and in opposition have not effectively made an attempt to solve it in the manner known to law and to honour the constitutional mandates. Constitution of India is resolved by, we people of India. Thus, we people of India, who elected the Government, would

have the right to expect from the Government to implement the constitutional mandates. Thus, the interest of the people at large must be of paramount importance for the Government of the day. If such communal clashes are continuing for several decades, and still continuing and if no effective steps are taken by the Government, it is to be construed as lack of sensitiveness prevails in such issues. May be on account of certain political interest, communal or regional or sectional interest. These narrow restricted interests are created by few groups for gains. No doubt, every political party is ambitious to come into power. However, while doing so, they are duty bound to ensure that the fundamental duties enunciated under the Constitution is also respected and followed. Thus while attempting to win the hearts of the people to gain power in a democratic country, such parties are bound to honour the constitutional principles and to respect the sentiments livelihood, peaceful living and fundamental rights of every citizen. Therefore, erection of statues of leaders in public places must be undoubtedly restricted and regulated. Unless it is regulated, there is no possibility of improvement of the present situation more so in the mindset of the people.

31. In order to resolve this issues, the “Leaders Park” may be created by identifying lands in strategic places, without affecting free public movements and the rights of the citizen. On creation of the “Leaders Park”, the statues, which all are causing obstructions, in public places, are to be re-located and is to be maintained properly by the competent authorities. A corpus fund is to be collected from the persons, who are seeking permission to erect statues in such “Leaders Park”. The “Leaders Park” created, can be decorated or beautified in such a manner, so as to attract the tourists and made the people to understand the ideas, ideologies and the philosophy of those leaders in order to enlighten the next generation for better understanding of the values in our society.

32. For submission of application, grant of permission, erection of statues, maintenance cost, all are to be regulated by framing clear guidelines. The Government shall pass orders, regulating the scheme of maintenance of statues in such “Leaders Park” and in this regard, a high level committee is to be constituted, who in turn, shall decide the issues relating to grant of permission, erection of statues, the manner in which it is to be erected, size of the statue and the maintenance cost etc., all to be regulated, so as to ensure that

the “Leaders Park” became an attractive and motivational park for the next generation children and young women and men of our great Nation.

33. In order to evict the encroachments made in public places, and remove illegal construction of structures, the Government is empowered to initiate eviction proceedings by following the procedures as contemplated under the Tamil Nadu Highways Act, 2001, Tamil Nadu Land Encroachment Act, 1905 and Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 and by invoking all relevant Act and Rules as the case may be.

34. In view of the facts and circumstances, this Court is inclined to issue the following directions:

(1) The first respondent is directed to identify the statues and structures in all public places, Highways, Public Roads, Government lands, Meikal Poramboke lands, etc., within a period of three months from the date of receipt of a copy of this order and thereafter, evict / remove all encroachments / unauthorised illegal structures, statues in public places, Highways / Public roads / Government lands / Meikal Poramboke lands etc., by following the procedures as contemplated under the relevant Acts and Rules in force.

(2) The first respondent is directed not to grant any permission hereinafter for erection of any structure or statues in Highways, Public Places / Government Poromboke / Meikal Poromboke, affecting / infringing the rights of the common people.

(3) The first respondent is directed to issue comprehensive guidelines for grant of permission for erection of statues or structures.

(4) The first respondent is directed to identify lands for creation of required numbers of “Leaders Park” across the State of Tamil Nadu, for erection of new statues and for re-location / replacement of existing statues, for which, permission has already been granted. Accordingly, the statues, structures, where permission is already granted, the said statues are to be re-located in the “Leaders Park”.

(5) The first respondent is directed to maintain the statues / structures after re-locating the same in the “Leaders Park” and the maintenance cost shall be recovered from the persons, who got permission for erection of such statues or structures. In case of non-payment of maintenance cost, the competent authorities shall recover such costs by invoking the Revenue Recovery Act. (It is made clear that relocation of the existing statues would arise only in cases, where permission was already granted by the competent authorities in accordance with law.)

(6) All the above directions are to be complied within a period of six months from the date of receipt of a copy of this order.

35. With these directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

07.10.2021

Index : Yes
Internet : Yes
Speaking Order: Yes

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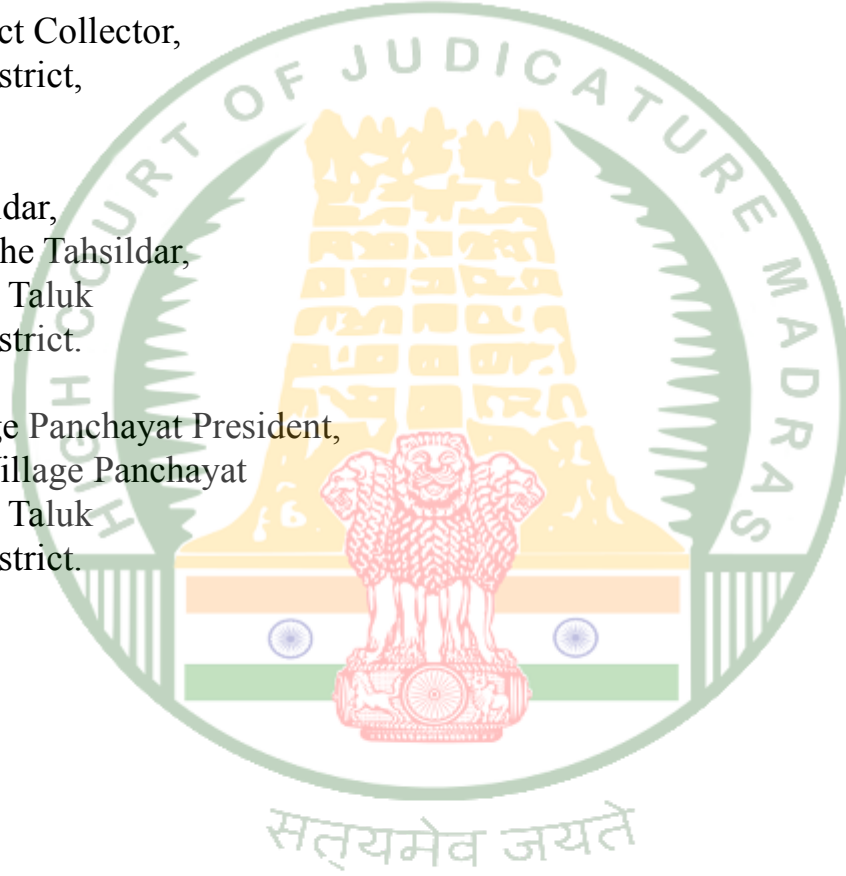
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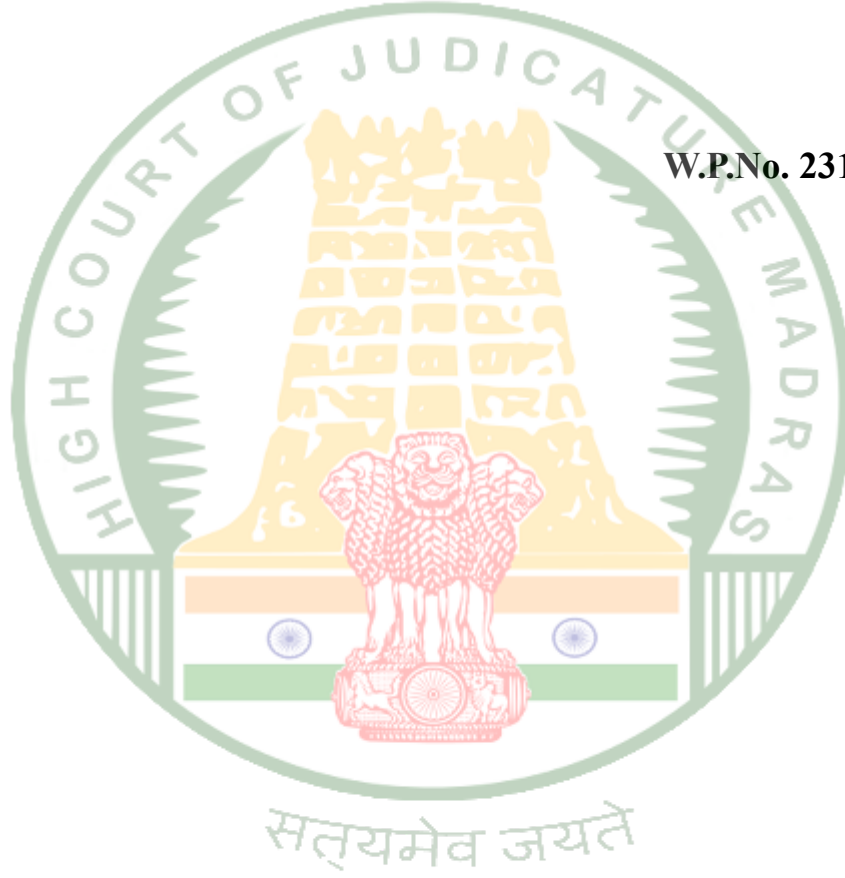


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