

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12/6/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11500 of 2018
and
W.M.P.No.13445 of 2018 and
8216 and 8626 of 2019

S.Muralidharan

Petitioner

Vs

1. Principal Chief Conservator of Forests
& Chief Wildlife Warden
Department of Forests
Government of Tamil Nadu
No.1 Jeenis Road, Panagal Buildings
Saidapet
Chennai 600 015.
2. Commissioner
Hindu Religious Charitable Endowments Department
119 Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034.
3. Indira. Respondents

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Prayer Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first respondent to remove the Elephant - Malachi from the custody of the third respondent and hand it over to the first respondent.

For petitioner ... Mr.SP.Chockalingam

For respondent ... Mr.S.V.Vijay Prashanth
Additional Government Pleader
(Forests) for R.1.

Mr.M.Maharaja
Special Government Pleader
(HR & CE) for R.2.

Ms.D.Geetha
for R.3.

ORDER

(Order of the Court was made by Subramonium Prasad, J)

Claiming himself to be an avid animal lover, who has dedicated his life for the cause of animals, petitioner has filed the instant writ petition, for a mandamus, directing the Principal Chief Conservator of Forests & Chief Wildlife Warden, Chennai, first respondent, to take possession of Elephant - Malachi, from Mrs.Indira, third respondent and to maintain it in any rejuvenation camp.

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2. Petitioner states that a female elephant, aged about 34 years, was owned by one Mrs.Masan, W/o. Late Aung Myint, resident of Rangat, North & Middle Andaman District. Mrs.Masan wanted to gift the said elephant Malachi

to Madurai Meenakshi Amman temple and for that purpose, Mrs.Masan gifted the elephant to the third respondent. She did not handover the elephant to the temple, instead is using it for begging and for marriage functions, among others. The Elephant is being treated cruelly. The petitioner states that complaints have been filed, regarding ill-treatment of the elephant, but no action has been taken by respondents 1 and 2. It is further stated in the petition that a Mahout, while riding Malachi had touched an overhead electrical wire, had been thrown off and consequently died. Even Malachi had also suffered, due to electrocution.

3. It is alleged in the petition that elephant is not being handled properly. She was not fed properly and made to walk on hot tar roads. Both her front and back legs are tied using heavy chain. It is further alleged that there is violation of Section 11 (e), 11 (f), 11 (h) of Prevention to Cruelty to Animals Act, 1960 and Rules 5, 6 (11), 7, 12, 13 (5), 13 (6) and 1 (8) of the Tamil Nadu Captive Elephants Management & Maintenance Rules, 2011 and also under Section 42 of Wildlife Protection Act, 1972.

4. In these circumstances, petitioner has filed the instant writ petition, praying for the relief as stated supra.

5. The Principal Chief Conservator of Forests and Chief Wildlife Warden, Chennai, first respondent, has filed a counter affidavit, wherein it has been stated that owner of the elephant had been fined for ill-treatment. In one such incident, in August 2017, owner of the elephant was fined, for a sum of Rs.10,000/-, vide WLOR No.52/217. Incident of electrocution, has been accepted by the third respondent, but contended that it was accidental. Elephant which received the shock, responded well.

6. Counter affidavit of the first respondent further states that the question of transfer of ownership is under consideration by the department. It is stated that the Elephant was transported from Andhaman Nicobar Islands to Madurai, by the third respondent, who got the elephant, by way of gift deed, from its original owner, during November 2007. The Chief Wildlife Warden, Andhaman, had issued ownership certificate No.372, dated 10/10/2007, to Smt.Masan. Transit permit was issued by the Chief Wildlife Warden, Andhaman, vide its Ref.No.CWLW/WI/10/1031, dated 10/10/2007, with certain conditions, as under:-

- (i). The ownership of elephant will not be transferred.
- (ii). There shall be no commercial transaction.
- (iii). The person receiving the elephant as gift shall inform Chief

Wildlife Warden, Tamil Nadu within 30 days of transfer of elephant from Port Blair to Madurai.

(iv). The person receiving the elephant as gift shall be responsible for the upkeep of the elephant.

7. It is also stated that the third respondent had submitted a representation, as early as in 2007, for change of ownership, which was rejected by the Principal Chief Conservator of Forests and Chief Wildlife Warden, in his Ref.No.WL1/68531/2007, dated 24/3/2010, and orders were issued to return the elephant to Andhaman & Nicobar Islands.

8. It is also stated in the counter affidavit that the original Microchip number of Malachi Elephant was 00064DA686 (as per the Veterinary Officer's certificate, Andhaman). However, during the first inspection by the local veterinary Assistant Surgeon, on 1/11/2007, at Palanganatham, Madurai, the Microchip number could not be verified, due to non availability of Microchip reader. It is stated that during the inspection conducted by the Forest Veterinary Officer, Coimbatore, on 17/8/2009, the Microchip number, for Malachi elephant was recorded, as 0006477726. Subsequently, the elephant was translocated to Kerala and named as "Kavitha" and a new microchip number as 0006593AR, is said to have been implanted and registered, in the

name of Thiru.Prathap Chandran. After return to Madurai, following the Court directions and legal actions, the Forest Veterinary Officer again inspected the elephant, on 9/11/2012 and since the microchip number could not be read, a new Microchip No.000659BB2D had been implanted by the Forest Veterinary Officer, Coimbatore.

9. This Court sought for a report from the District Level Committee to look into the welfare of the elephant. District Level Committee, after carrying out inspection, observed as under:-

"The Committee comprising of District Forest Officer, Assistant Director, Animal Husbandry and Dr.T.Badri Narayanan, Member, inspected Malachi elephant on 23/1/2019 in presence of present care taker Mrs.Indira. The Committee recommends that the elephant Malachi may be kept in custody of the present caretaker."

10. Mr.SP.Chockalingam, learned counsel for the petitioner states that the elephant is being treated cruelly. Learned counsel relied on certain newspaper cuttings, more particularly, a report from the website of Times of India, stating that elephant Malachi was made to stand under the Sun, for begging and parading, in marriage functions. Learned counsel for the petitioner also relies on a paper cutting, dated 25th September, wherein it is

stated that a fine amount of Rs.25,000/- has been imposed, on the third respondent, when the Mahout was drunk, while taking care of the elephant. For the present, we are not going in to the aspect as to whether newspaper cutting can be looked into or not, since most of the incidents relied on have been accepted by respondent No.1.

11. After stating the various incidents of cruelty met out to the elephant, learned counsel for the petitioner submitted that Section 11 of the Prevention of Cruelty to Animals Act, 1960 and Rule 6 of the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011, and submitted that both the provisions are violated.

12. Learned counsel for the petitioner would also submit that despite repeated offences, first respondent is not taking any steps, to rescue the elephant, from the third respondent. Learned counsel for the petitioner also stated that report filed by the District Level Captive Elephant Welfare Committee, Madurai, cannot be relied on. He also pointed out that there are several inconsistencies in the report.

13. Mrs.Indira, third respondent has also filed a counter, denying all the allegations made by the petitioner and stated that the elephant is taken good

care of. She also relies on the earlier certificates which had issued recommending for issuance of certificate of ownership in her name. Third respondent has stated that she has sufficient funds to maintain the elephant and inviting the attention of this Court to the report of the District Level Captive Elephant Welfare Committee, dated 23.01.2019, further stated that adequate care is being taken.

14. Heard Mr.SP.Chockalingam, learned counsel for the petitioner, Mr.S.V.Vijay Prashanth, Additional Government Pleader (Forests) for the first respondent, Mr.M.Maharaja, Special Government Pleader (HR & CE) for the second respondent and Ms.D.Geetha for the third respondent.

15. Section 11 of the Prevention of Cruelty to Animals Act, 1960, reads as under:-

11.Treating animals cruelly :- (1) If any person -

(a) Beats, kicks, over, ever-drives, overloads, tortures of otherwise treats any animals so as to subject it to unnecessary pain or suffering or causes or; being the owner permits, any animal to be so treated ; or

(b) employs in any work or labour any animal which,

by reason of any disease, infirmity, wound, sore or other cause, is unfit to be employed or being the owner, permits any such unfit animal to be employed ; or

(c) Willfully and unreasonably administers any injurious drug or injurious substance to any domestic or captive animal or willfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any domestic or captive animal; or

(d) conveys or carries, whether in or upon any vehicle or not any animal in such a manner or position as to subject it to unnecessary pain or suffering or

(e) keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f) keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or

(g) being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement or

(h) being the owner of any captive animal, fails to provide such animal with sufficient food, drink or shelter; or

(i) without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or (j) willfully

permits any animal of which he is the owner, to go at large in any street while the animal is affected with contagious or infectious disease or without reasonable excuse permits any diseased or disabled animal of which he is the owner, to die in any street; or

(k) offers for sale or, without reasonable cause, has in his possession any animals which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill treatment; or

(l) mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or

(m). solely with a view to providing entertainment-

(i). confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal; or

(ii). incites any animal to fight or bait any other animal; or

(n). organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o). promotes or takes part in any shooting match or competition wherein animals are released from captivity

for the purpose of such shooting; he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both,

(2). For the purpose of sub-Section (1), an owner shall be deemed to have committed an offence if he has failed to exercise reasonable care and supervision with a view to the prevention of such offence.

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3). Nothing in this section shall apply to- (a) the dehorning of cattle, or the castration or branding or nose roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed or

(c). the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction

of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

16. Rule 6 of the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011, reads as under:-

Care of Elephant - (1) (a) There shall be bathing pool of minimum size 10 meter x 10 meter x 1.5 meter to 2 meter with gentle slope on all sides.

(b) The mahout shall ensure that the elephant gets a thorough bath every day. The elephant should be kept in bathing pool for not less than three hours while bathing.

(c). Scrubbing and cleaning of elephant body with coconut scrap should be done properly by the mahout himself and the cavady.

10. The organisers of festivals where elephants are used shall submit in writing the programmes with details to the Station House Officer and the Range Officer of the Department having jurisdiction over the area, who in turn shall ensure the implementation of the provisions in these Rules well in advance.

11. The elephant should not be taken to street and other places for begging or any other mean purposes.

21. No owner shall permit the use of nylon ropes or chains or hobbies with spikes or sharp edges for tying the elephants.

17. Government have issued G.O.Ms.No.118, Environment and Forests (FR.V) Department, dated 17.10.2016, constituting District Level Captive Elephant Welfare Committees and the same reads thus:-

GOVERNMENT OF TAMIL NADU

ABSTRACT

Forests - Wildlife - Constitution of District Level Captive Elephant Welfare Committees - Orders - issued

ENVIRONMENT AND FORESTS (FR.V) DEPARTMENT

G.O.(Ms)No.118

Dated: 17.10.2016

குன்முக், ஐப்பசி 1

திருவள்ளூர் ஆண்டு 2047

Read:

- 1) G.O.(Ms).No.107, Environment and Forests (FR.5) Department, dated 16.09.2011.
- 2) From the Principal Chief Conservator of Forests and Chief Wildlife Warden letter No.WL1/6349/2015, dated 22.06.2015 and 15.07.2015.
- 3) G.O.(Ms)No.81, Environment and Forests (FR.5) Department, dated 20.07.2016.
- 4) From the Principal Chief Conservator of Forests and Chief Wildlife Warden Letter No.WL1/6349/2015, dated 19.09.2016.

ORDER:

In the Government order first read above, Government have framed the Tamil Nadu Captive Elephant (Management and Maintenance) Rules, 1972 (Central Act 53 of 1972). Further, the

Hon'ble High Court of Madras among others has ordered the Government to constitute a State Level Committee and District Level Committees as per rule 15 of the Tamil Nadu Captive Elephant (Management and Maintenance) Rules, 2011 within six weeks from 04.03.2016. Accordingly, State Level Captive Elephant Welfare Committee (SLCEWC) has already been constituted in the Government order third read above.

2. The Principal Chief Conservator of Forests and Chief Wildlife Warden has stated that the concerned District Forests Officer / Wildlife Warden of 32 Districts have been recommended as Member Convener of the District Level Captive Elephant Welfare Committee (DLCEWC) to maintain control and uniformity in the respective Districts. The District Level Captive Elephant Welfare Committee (DLCEWC) is constituted under sub rule (3) of rule No.15 of the Tamil Nadu Captive Elephant (Management and Maintenance) Rules, 2011 in each district of Tamil Nadu with the members as mentioned in the annexure to this order. He has also stated that the term of office of the Members in District Level Captive Elephant Welfare Committee (DLCEWC) other than ex-officio members is two years. As per the Tamil Nadu Captive Elephant (Management and Maintenance) Rule, 2011 the District Level Captive Elephant Welfare Committee's duties and responsibilities are as follows:

i. The District Level Captive Elephant Welfare Committee shall inspect the records maintained under these rules and send a report to the State Level Captive Elephant Welfare Committee for

its recommendations. The District Level Captive Elephant Welfare Committee shall review the welfare and maintenance the elephant, once in three months.

ii. Each District Level Captive Elephant Welfare Committee shall maintain a date sheet as specified in Annexure-II of the Tamil Nadu Captive Elephant (Management and Maintenance) Rule, 2011 in respect of each captive elephant in the district under their jurisdiction.

3. The Government after careful examination accepts the proposal of Principal Chief Conservator of Forests and Chief Wildlife Warden and accordingly constitute the District Level Captive Elephant Welfare Committees (DLCEWC) with the members mentioned in the annexure to this order. The term of office of the members of this committee other than ex-officio members will be two years from the date of issue of this order.

(BY ORDER OF THE GOVERNOR)

ATULYA MISRA

PRINCIPAL SECRETARY TO GOVERNMENT

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18. Report of the District Level Captive Elephant Welfare Committee, Madurai, dated 23.01.2019, has already been extracted.

19. Learned Additional Government Pleader (Forests) made submissions on the basis of the counter affidavit filed. Learned counsel for the Government

was asked to verify as to on how many occasions violations under Section 11 (e), 11 (f), 11 (h) of Prevention to Cruelty to Animals Act, 1960 and Rules 5, 6 (11), 7, 12, 13 (5), 13 (6) and 1 (8) of the Tamil Nadu Captive Elephants Management & Maintenance Rules, 2011 and also under Section 42 of Wildlife Protection Act, 1972, were noticed and as to on how many times, the third respondent was penalised for such violations.

20. In this regard, additional counter affidavit is filed by the Principal Chief Conservator of Forests and Chief Wildlife Warden. Paragraph No.1, which brings out the cases that have been booked against the care takers of elephant Malachi, is reproduced:-

S. No.	Date	WLOR No.	Offence details	Fine (Rs.)	Offence booked against (Name)
1	5/8/2013	5/2013	Begging	10,000	Lakshmanan
2	24/9/2014	3/2014	Drunkard Mahout and given ill treatment to elephant	25,000	Indira
3	25/1/2015	2/2015	Ill treatment	10,000	Indira
4	26/8/2017	52/2017	Ill treatment	10,000	M.Kannan
5	1/8/2018	8/2018	Begging	25,000	R.Ashok

21. It has also been stated in the affidavit that a clarification has been

sought for, from the Government of India, regarding transfer of ownership certificate, in respect of captive elephant. Learned counsel for the Government placed on record the proceeding of the 15th Meeting of Steering Committee of project elephant, wherein transfer of ownership certificate, in respect of captive elephants has been discussed, and decided as under:-

c. Transfer of ownership certificate in respect of captive elephants:

CWLW, Tamil Nadu informed that as per Section 40(2) of wildlife (protection) Act, 1972, there is an enabling provision for sale of schedule-I captive animal with previous permission of chief wildlife warden. However, the same has been subsequently amended with another Section 40(2A) of Wildlife (Protection) Act, 1972 limiting the transfer only by way of inheritance in respect of Schedule-I captive animals excepting live elephants implying that it will, still be governed by the spirit of original Section 40(2) of Wildlife (Protection) Act, 1972.

But Section 43(1) of the Wildlife (Protection) Act, 1972, again places embargo on any sort of sale or by any mode of commercial nature, such transfer of Schedule-I captive animal which covers live elephant. To circumvent this embargo, many requests of transfer by way of gift have also started coming in respect of live elephant.

However, it was clarified that the spirit of Section 43 (1) is for preventing any transfer of Schedule-I animals. Hence, the request for transfer by way of gift is not in spirit

of the section which prohibits any such transactions. Further, it was decided that the matter is under consideration in the Ministry and as a short term measure will hold a meeting with concerned state forest departments on this matter.

22. Learned counsel for the State, drew the attention of this Court to a list of elephants which have been brought to Tamil Nadu from various States and submitted that a decision would be taken regarding the ownership certificate of this elephant.

23. A perusal of the additional counter affidavit filed by the first respondent would show that cases have been registered against the care takers of the elephant. It has also been categorically stated that no permit had been issued by the first respondent, permitting the elephant to be in marriage functions/temple functions/religious functions, etc., at any point of time. There is no denial on the part of the third respondent that the elephant has not been used for any marriage functions.

24. Learned counsel for the third respondent would state that elephant was not used for any begging purpose, but when the elephant walks on the road, people would themselves come and offer money. This excuse cannot be accepted. Learned counsel for the third respondent also states that they are

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not responsible for the collection of money.

25. Material on record shows that fine upto Rs.25,000/- has been imposed on the care takers of the elephant and they have paid the fine. Ownership certificate has not yet been transferred to the third respondent. Material on record further indicates that various provisions of Prevention of Cruelty to Animals Act, 1960 and the Tamil Nadu Captive Elephants (Management and Maintenance) Rules, 2011 have been violated.

26. Though on the basis of the report dated 23.01.2019, of the District Level Captive Elephant Welfare Committee, Ms.D.Geetha, learned counsel for the 3rd respondent submitted that the elephant is taken care of properly and that the Committee has opined that the custody of the elephant can be retained with the care taker, the fact that the elephant has been used for begging and that the care taker has been fined for five times, cannot be brushed aside. The last incident of imposition of fine of Rs.25,000/- on 01.08.2018, for begging, is after the filing of the instant writ petition. Even taking it for granted, that the elephant is adequately fed and taken care, the manner in which the elephant has been used, cannot be ignored. Disregard to the statutory rules, is apparent on the face of record.

27. In such a scenario, the elephant cannot be permitted to be kept in the custody of the third respondent. In view of unimpeachable material on record, showing that elephant is being used for begging and subjected to ill treatment, **we allow the writ petition** and direct the first respondent, to take possession of the elephant, forthwith. We also direct the Principal Chief Conservator of Forests & Chief Wildlife Warden, Chennai, to decide the application, for transfer of ownership certificate, forthwith. We are not expressing any opinion, as to how the application for ownership certificate should be dealt with which shall be done on its own merit, keeping in mind the materials available on record. The Principal Chief Conservator of Forests & Chief Wildlife Warden, Chennai, first respondent may either keep the elephant in a camp or transport it to a Zoo, in accordance with law. No costs. Consequently, the connected Miscellaneous Petition Nos.13445 of 2018, 8216 and 8626 of 2019 are closed.

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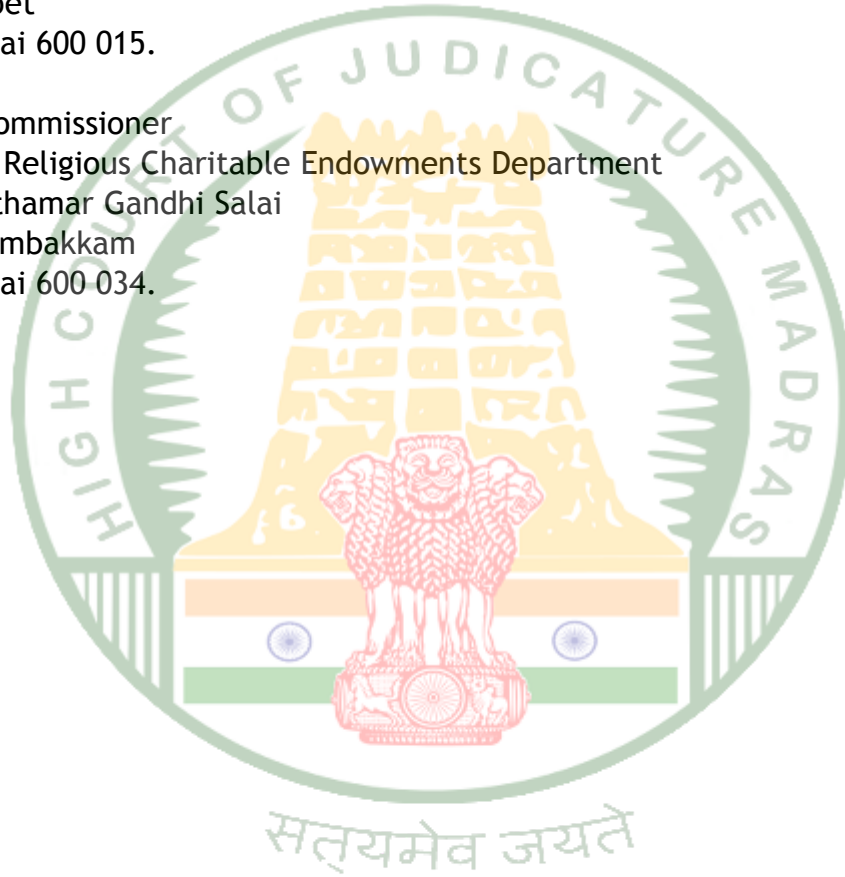
(S.M.K.,J) (S.P.,J)
12th June 2019

mvs/dm
Index: Yes/No
Internet: Yes/No

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To

1. Principal Chief Conservator of Forests
& Chief Wildlife Warden
Department of Forests
Government of Tamil Nadu
No.1 Jeenis Road, Panagal Buildings
Saidapet
Chennai 600 015.
2. The Commissioner
Hindu Religious Charitable Endowments Department
119 Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034.



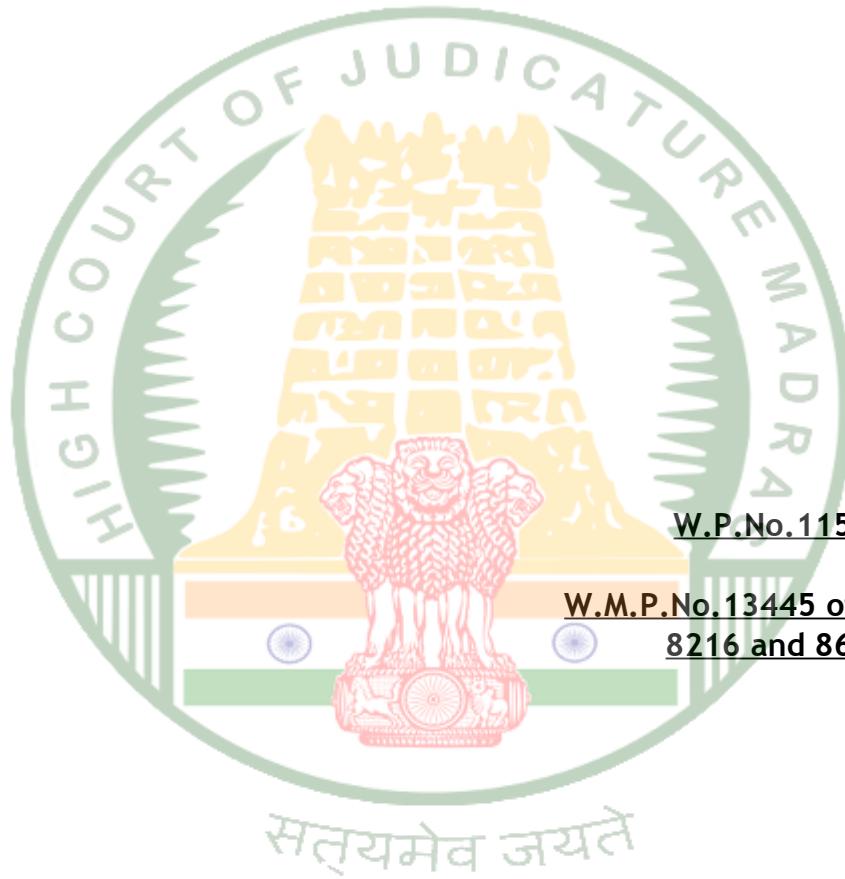
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12/6/2019