



W.P.(MD).No.13418 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 06.09.2024

CORAM

**THE HONOURABLE MR.D.KRISHNAKUMAR,
THE ACTING CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P.(MD).No.13418 of 2018
and
W.M.P.(MD).Nos.12226 and 12227 of 2018

C.John Kennady

.. Petitioner

Vs.

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The Divisional Engineer,
Construction and Maintenance Office,
Nagercoil,
Kanyakumari District.
- 3.The Assistant Engineer,
Construction and Maintenance Office,
Thuckalay,
Kanyakumari District.
- 4.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.

5.P.Devaraj

.. Respondents



W.P.(MD).No.13418 of 2018

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records on the file of the first respondent pertaining to its order bearing No.D.Dis.C3/15518/2016 dated 09.05.2016 and to quash the same and consequently direct the respondents to remove the encroachment and constructions made Colachel-Mulagumoodu Road at Thickenamcode Channel Promoke, Tharavilai comprised in Survey No.749, Thickenamcode Village, Kalkulam Taluk, Kanyakumari District within a stipulated time that may fixed by this Court.

For Petitioner : Mr.S.C.Herold Singh
For R-1 to R-4 : Mr.P.Thilakkumar
Government Pleader

ORDER

(Order of the Court was made by
The Hon'ble The ACTING CHIEF JUSTICE)

The present Writ Petition is filed challenging the order passed by the District Collector, Kanniyakumari District, dated 09.05.2016, wherein, the petitioner's representation for removal of encroachment was considered and rejected stating that the subject Temple is not causing any hindrance to the transportation and free flow of water in the channel.



W.P.(MD).No.13418 of 2018

2. According to the petitioner, the property in question is classified as "Salai Poramboke" in the 'A' Register and the authorities have to take necessary action for removal of encroachment.

3. The learned Government Pleader appearing for the official respondents would submit that the subject temple is in existence for more than 40 years. It is further submitted that deity is in existence for more than 200 years and the Villagers are worshipping the deity in the said temple and at present, there is no hindrance to the public. Further, it is also brought to the notice of this Court from the decree in O.S.No.842 of 1988 passed by the Additional District Munsif Court, Padmanabhapuram, that the temple exists for several long years in the disputed land. Considering the said facts, the District Collector, Kanniyakumari District, has passed the impugned order, by rejecting the claim of the petitioner for removal of encroachment in the said property. The District Collector has also verified the records as well as considered the claim of the petitioner and came to the conclusion that the temple is not causing any hindrance to the public or to the traffic. If the temple is causing any hindrance to the public or to the traffic, necessary action will be taken in accordance with law.



W.P.(MD).No.13418 of 2018

4. Considering the fact that the deity has been in existence for more than 200 years and the said building is in existence for more than 40 years, and there is no urgency required for removal of the said temple and also considering the interest of the public and devotees, by accepting the submission of the learned Government Pleader, we are rejecting the present Writ Petition. It is made clear that it is for the authorities concerned to take appropriate action in accordance with law, if any required in future.

5. It is also made clear that further construction shall not be carried out by the temple authorities without getting prior permission from the Government. Further, the usage of pathway and channel by the public shall not be disturbed by the temple authorities.

6. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(D.K.K., A.C.J.) (M.S.Q.,J.)
06.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm/SMN2



W.P.(MD).No.13418 of 2018

To

1. The District Collector,
Nagercoil,
Kanyakumari District.
2. The Divisional Engineer,
Construction and Maintenance Office,
Nagercoil,
Kanyakumari District.
3. The Assistant Engineer,
Construction and Maintenance Office,
Thuckalay,
Kanyakumari District.
4. The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.



WEB COPY



W.P.(MD).No.13418 of 2018

D.KRISHNAKUMAR, A.C.J.
AND
MOHAMMED SHAFFIQ, J.

Lm/SMN2

W.P.(MD).No.13418 of 2018

06.09.2024