



WEB COPY

W.P.No.4792 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2026

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.4792 of 2026

R.Jaya
W/o.Raj
No.5, Solaiamman Kovil 3rd Street,
Kodungaiyur, Chenani 600 118

Petitioner

Vs

- 1.The District Collector
Chennai District,
No.62, 4th Floor, Rajaji Salai,
Beach Road, George Town,
Chenani 600 001
- 2.The Commissioner
Hindu Religious and Charitable
Endowments Department,
No.119, Mahatma Gandhi Salai,
Thousand Lights,
Nungambakam,
Chennai 600 034
- 3.The Corporation Commissioner
Greater Chennai Corporation,
Rippon Building, Periyamet,
Chennai 600 003



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4.The Assistant Engineer
Greater Chennai Corporation,
Zone 4, Block 34, Venkateswara Colony,
Chennai 600 021

5.G. Babu
S/o.P.Govindharaj,
No.4/2, Balaji Nagar Extension,
Kodungaiyur, Chennai 600 118

Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records relating to the Impugned Notice No.Ma.4/Encroachment/Ward 34/5427/2025 dated 15.09.2025 on the file 4th respondent and consequently direct the respondents 1 to 4 to take appropriate actions and dispose of the representation dated 17.07.2025, given by the petitioner by conducting an enquiry by following the directions given by this Hon'ble Court in W.P.No.33832 of 2024.

For Petitioner: Ms.Kamachi.D

For Respondents: Mr.M.Habeeb Rahman
Government Advocate
for R1

Mr. N.R.R.Arun Natarajan
Spl. G.P. (HR & CE)
for R2

Mr.A.Arun Babu
Standing Counsel
for R3 and R4



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ORDER

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(Order of the Court was made by the Hon'ble Chief Justice)

With consent of the parties, this writ petition is heard finally.

2. Challenge is to the notice dated 15.09.2025 on the sole ground that despite the order of this Court passed earlier on 19.11.2024 in W.P.No.33832 of 2024 [*G.Babu v. The District Collector, Chennai and others*], straightaway a removal order has been slapped on the face of the petitioner.

3. Learned counsel for the petitioner would submit that the order of this Court required the respondent authorities to show cause by supplying a copy of the inspection report, so that the petitioner could defend and satisfy the authority that it is not a case of encroachment.

4. Learned counsel for the respondent Corporation would submit that the notice issued on 15.09.2025 is in the nature of show cause and it is not in the nature of a final order.



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5. The contents of the impugned notice read as below:

"A case has been filed in the Madras High Court by Mr.G.Babu (Case No.W.P.NO.33832/2024 W.M.P.NO.5497/2025) alleging that the land where the temple was built in Ward-34, Zone-4, Area-9, Ward-34, Chennai Metropolitan Corporation, encroaching on the road and encroaching on the road, i.e., the Madras High Court, which heard the case, has issued an order on 18.03.2025 to the Revenue Commissioner to conduct a field inspection and remove the encroachment in question and take further action.

Therefore, in this regard, the Revenue Commissioner conducted a field survey and found that the place where the temple is built is a road belonging to the Greater Chennai Corporation, and he has written to the Greater Chennai Corporation on 11/06/2025 to immediately remove the temple encroaching on the road and submit a report. According to the Revenue Commissioner's report, the temple built encroaching on the above road is intended to be removed under Section -128 of the Tamil Nadu Urban Local Bodies Act, 1998.

Therefore, you should remove the aforesaid encroachment within 7 days (seven days) from the date of issue of this notice. Failure to do so will result in the Greater Chennai Corporation taking action to remove the said temple encroachment without any notice under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998. You are



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also informed that you will be responsible for all the costs and consequences of removing the temple encroachment.”

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After going through the contents of the impugned notice, read as it is, it appears to be a premeditated decision.

6. It has been repeatedly held by the Apex Court and this Court, time and again, that if the notice itself shows that the authority pre-judged the issue, a cause of action will arise to challenge the notice itself. There is nothing in the notice which requires the petitioner to show cause against the action of removal. The notice directs the petitioner to remove the encroachment in seven days from the date of issuance of the notice. It further states that, in case of failure, the Corporation will take action to remove the encroachment without any notice under Section 128 of the Tamil Nadu Urban Local Bodies Act, 1998 and the petitioner would be responsible for all costs and consequences of removing the encroachment.

If that be the text and tenor of the notice, it is clear that the authorities have pre-judged the issue and have already taken a decision requiring the petitioner to remove the so-called encroachment in seven days.

The submission of learned counsel for the Corporation that it



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should be treated as show cause notice cannot be accepted. It appears that when the action was called in question in the Court, it is sought to be defended by treating the order as notice. That cannot be allowed.

7. Therefore, the notice dated 15.09.2025 is not to show cause against any proposed action, but to remove the encroachment.

8. In *Siemens Limited v. State of Maharashtra and others*¹, their Lordships in the Supreme Court propounded the legal principle in the matter of challenge to the show cause notice in limited circumstance where it is a case of premeditated action as below:

"9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943], Special Director v. Mohd. Ghulam Ghose [(2004) 3 SCC 440 : 2004 SCC (Cri) 826] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2006) 12 Scale 262], but the question herein has to be considered from a different angle viz. when a notice is

¹(2006) 12 SCC 33



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issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. (See K.I. Shephard v. Union of India [(1987) 4 SCC 431 : 1987 SCC (L&S) 438 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice.

11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable.”

9. The notice incidentally is also in contravention of a clear direction of this Court in the earlier round of litigation. While disposing of W.P.No.33832 of 2024 filed by one G.Babu (fifth respondent herein), wherein allegation of encroachment was levelled, this Court clearly held as below:



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"10. This Court directs the jurisdictional Divisional Monitoring Committee to examine if there is encroachment qua said land. The Divisional Monitoring Committee shall also ensure that adequate and ample opportunity is given to persons concerned more particularly alleged encroachers (R6 & R7) before taking a call. In this regard, we are acutely conscious that the matter is being disposed of in Admission Board without notice to alleged encroachers and therefore, this safety valve is put in place. To be noted, all the rights and contentions of alleged encroachers are preserved for being raised before the Committee concerned which shall consider the same on its own merits and in accordance with law untrammelled by this proceedings in this Court."

Subsequent step that could be taken under the law was also stated in the order as below:

"11. The Divisional Monitoring Committee qua G.O. (Ms)No.64, Revenue and Disaster Management Department, Land Disposal Wing, dated 08.02.2022, shall (if it comes to the conclusion that there is encroachment) report the encroachment for further action (for removal of encroachment which again shall be after giving adequate and ample opportunity to alleged encroachers)."

10. It is, therefore, clear that the next step of removal could be taken only after affording an opportunity of hearing. The impugned



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notice takes the final step as envisaged in paragraph 11 of the order (supra) without complying with the direction issued as contained in paragraph 10 of the order (supra). Therefore, the impugned notice is clearly in the teeth of the order passed by this Court earlier.

11. There is yet another reason for us to hold that the impugned notice, in any case, is in violation of law. Section 128 of the Act provides for power to remove encroachment from public place, which reads thus:

"128. Power to remove encroachment from public place. -

(1) The Commissioner may, -

(a) 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 street, public place, water body, tank, other water resources or any land belonging to or vested with the municipality with the municipal limit;

(b) remove any immovable structure whether permanent or of temporary nature encroaching street, public place, water body, tank, other water resources or any land belonging to or vested with the municipality within the municipal limit, after issuing a show cause notice for such removal,



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returnable within a period of fifteen days from the date of receipt thereof:

Provided that the Commissioner shall consider any representation received within the time limit, before passing final orders.

(2) Whoever makes any encroachment in any land or space (not being private property) in any public street, water body, tank, other water resources or any land belonging to or vested with the municipality within the municipal limit, shall, on conviction, be punished with imprisonment which shall not be less than one year but which may extend to three years and with fine which may extend to fifty thousand rupees:

Provided that the Court may, for any adequate or special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year."

12. The aforesaid provision in unequivocal terms regulates the exercise of power by incorporating the principles of natural justice by providing that the action may be taken only after issuing show cause notice for such removal returnable within the stipulated period. The proviso obliges the Commissioner to consider the representation received within the time limited before passing final orders.



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Therefore, it is *sine qua non* for exercise of power of removal that person against whom the said action is proposed should be given a show cause notice, representation received and consideration by due application of mind based on materials available/collected during the enquiry and supply to the affected party. This minimal exercise is necessary irrespective of whether or not there is express provision.

13. As early as in the case of *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi*², the Constitution Bench of the Apex Court clearly held that when an order results in civil consequences, compliance with the principles of natural justice is inviolable rule.

14. True it is that in some of the subsequent decisions, including in the case of *Aligarh Muslim University and others v. Mansoor Ali Khan*³, certain exceptional circumstances have been carved out, but barring exceptional cases, the compliance with the principles of natural justice is a must.

²(1978) 1 SCC 405

³(2000) 7 SCC 529



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15. In the present case, if we look into the contents of the impugned notice, it is apparent that it is not in the nature of show cause, but a premeditated decision and cannot be treated as show cause notice by any stretch of imagination.

16. Therefore, viewed from any angle, the impugned notice cannot be sustained in law and the same is set aside. It is open for the Corporation to initiate fresh proceedings by issuing show cause notice to the petitioner along with copy of the inspection report and giving reasonable opportunity to submit reply and thereafter act in accordance with law.

17. With the above observation and direction, the writ petition is disposed of.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ)

(G.ARUL MURUGAN,J)

19.02.2026

Index : Yes
Neutral Citation : Yes
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