



W.P.(MD) No.2934 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2026

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.(MD)Nos.2934 of 2026

and

W.M.P.(MD).No.2418 of 2026

Josevin

... Petitioner

Vs

1.The Joint Commissioner / Executive Officer,
Hindu Religious and Charitable Endowments Department,
Susendhram,
Kanniyakumari District.

2.The Executive Officer,
Hindu Religious and Charitable Endowments Department,
Arulmigu Bhagavathi Amman Temple,
Kanniyakumari District.

3.The Municipal Commissioner,
Kanniyakumari Municipality,
Kanniyakumari District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the record on the file of first respondent in impugned notice in Na.Ka.No. 2852/2025/D3, dated 23.01.2026, issued by the first respondent against the petitioner and quash the same as illegal and consequently direct the respondents not to interfere in the peaceful possession and enjoyment of the petitioner in the land in S.No. 675/3 without following the due process of law



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For Petitioner : Mr.M.Vivek Bharthi
For R-1 & R-2 : Mr.R.Shankar Ganesh
For R-3 : Mr.H.Arumugam

ORDER

This writ petition has been filed against the impugned notice dated 23.01.2026 issued by the Joint Commissioner of HR&CE Department / first respondent herein.

2. The learned counsel appearing for the petitioner would submit that the Manager, Arulmigu Bhagavathiammam Temple (hereinafter called as “Temple”) had constructed buildings in the form of shops in the subject premises and leased out the same to the petitioner. Now, the Joint Commissioner, HR&CE Department made an attempt to remove the petitioner's shop by stating that the said buildings are unauthorized constructions and in this regard, he had issued notices to the petitioner directing him to vacate the premises and handover the possession to the Temple Authorities within a period of 3 days.

3. Further, they would submit that the properties were constructed by the Temple and leased out to the petitioner and now, the Temple is in



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the process of making an application for getting regularisation, since the building was constructed without approval. Under these circumstances, without providing any opportunities to the petitioner, the Kanyakumari Municipality had proceeded to demolish the constructions made by the Temple, in which the petitioner is running shops and duly paying the rent.

4. Further, the learned counsel appearing for the Temple would also submit that in this case, there is no need for getting any approval since these constructions were put up few decades ago. After all, these are all leased out properties, for which, the petitioner is duly paying the lease amount.

5. By referring the order passed by the Hon'ble Division Bench in WP(MD)No.17868 of 2014 dated 09.12.2025, he would submit that the said order was passed for removal of unauthorised constructions made by a particular occupant on the ground of encroachment of the Temple property without obtaining any approval. However, taking into cognizance of the said order, the Commissioner, Kanyakumari Municipality had applied the same yard stick for all the shop owners, to



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whom the constructions were leased out by the Temple, and issued the impugned notice to vacate the premises. Hence, he requests this Court to quash the proceedings initiated by the Commissioner, Kanyakumari Municipality. In support of his contentions, he referred to the order passed by the Hon'ble Apex Court in ***Civil Appeal Nos.3461 to 2505 of 2019 (S.Kumar vs. The Commissioner and others)***.

6. On the other hand, the learned Special Government Pleader for the Commissioner, Kanyakumari Municipality, had strongly opposed the submissions made by the petitioner and would submit that the constructions were made by the Temple without obtaining any approval and hence, the Hon'ble Division Bench of this Court, vide the order dated 09.12.2025 in WP(MD).No.17868 of 2014, issued a direction for removal of unauthorised constructions. Subsequently, vide order dated 19.01.2026, the Hon'ble Division Bench had granted time limit for removal of the said unauthorised constructions till 23.01.2026 and the same was extended till tomorrow (30.01.2026). In such case, the Commissioner, Kanyakumari Municipality, is bound to comply the said order, otherwise it would amount to contempt of the Court. Hence, he would suggest that if the petitioner is aggrieved over the said notice, they can very well file an appeal before the Hon'ble Apex Court.



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7. Further, he would submit that the order passed by the Hon'ble Division Bench of this Court would apply to all the persons, who are running shops in the unauthorised constructions. In these cases, the petitioner and the Temple had admitted that the buildings at the subject premises were constructed without obtaining any approval. When such being the case, if these petition is entertained, the same will certainly amount to violation of the order dated 19.01.2026 passed by the Hon'ble Division Bench of this Court. Hence, he prays for dismissal of this petition.

8. Heard the learned counsel and perused the entire materials available on record.

9. In the case on hand, upon perusal of the affidavits and other relevant documents furnished by the petitioner, it appears that the constructions at the subject premises were put up by the Temple in the form of shops and the same were leased out to the petitioner. The petitioner is in enjoyment of the said shop and running his business, for which, he is duly paying the rents to the Temple. There is no dispute on the above aspect.



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10. Under these circumstances, pursuant to the order dated 19.01.2026 passed by the Hon'ble Division Bench of this Court in WP(MD)No.17868 of 2014, now, the Commissioner, Kanyakumari Municipality is taking steps to demolish the unauthorised buildings, which were constructed without approval and leased out to the petitioner by the Temple.

11. Upon perusal, it appears that in the said Division Bench order, it has been categorically stated that inspite of the notice issued on 11.11.2025, no steps were taken by the petitioner and the Temple to remove the unauthorised constructions and vacate the premises. Under these circumstances only, a direction was issued to the Commissioner, Kanyakumari Municipality, to take an immediate action for removing the unauthorised constructions and file a report on or before 23.01.2026. The said order is extracted hereunder :

“The status report file by the Commissioner, Kanyakumari District, indicates that many of the unauthorised constructions particularly put up by the temple has not been removed in spite of the notice issued on 11.11.2025. Immediate action for removing the unauthorized construction should be taken and report be filed on or



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before 23.01.2026. Post on 23.01.2026.”

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12. A perusal of the above makes it clear that the Commissioner, Kanyakumari Municipality had already put up a notice on 11.11.2025 to the petitioner. In spite of the same, no steps were taken for removal of the said unauthorised constructions.

13. Further, the fact remains that the said constructions are unauthorised constructions and the same were put up without obtaining any approval. According to the Commissioner, Kanyakumari Municipality, this aspect was already brought into the knowledge of the Hon'ble Division Bench of this Court, wherein the requests made by the petitioner were rejected after due consideration of all the aspects. Under these circumstances only, pursuant to the order passed by the Hon'ble Division Bench, the 4th respondent had issued the impugned notice dated 23.01.2026. Aggrieved over the same, the petitioner filed the present petition.

14. As rightly contended by the Commissioner, Kanyakumari Municipality, the Hon'ble Division Bench of this Court had already duly



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considered all the aspects raised by the petitioner and the Temple while passing the orders dated 09.12.2025 & 19.01.2026 for removal of unauthorised constructions at the subject premises. When such being the case, now, it is not proper for this Court to entertain this petition and interfere with the impugned notice, which was issued by the Commissioner, Kanyakumari Municipality, pursuant to the aforesaid order dated 19.01.2026.

15. Further, a submission was also made on behalf of the street vendors. At this juncture, this Court feels that it would appropriate to make it clear that the order passed by the Hon'ble Division Bench of this Court is only with regard to the illegal and unauthorised constructions at the subject premises. When such being the case, it is needless to state that the interest of the street vendors, who are running their shops at the empty spaces, will not at all get affected by virtue of the said order.

16. A reference was made by the petitioner to the order passed by the Hon'ble Supreme Court in ***Civil Appeal Nos.3461-3505***. The relevant portion of the said order reads as follows:

“6. These appellants individually claim that they have been doing their business either as licensee or/and



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with the permission of the Temple Authorities. In substance, the claim of the appellants is that they have been in lawful possession of the land for doing their business and, therefore, the respondents-the State Authorities and the Temple Management cannot dispossess any of them from their individual shops without following the due process of law.

7 to 11

12. In our considered opinion, the issue raised in these appeals is governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short “the Act, 1959). Chapter VII of the Act, 1959 deals with the cases of encroachment on the land belonging to religious institutions. This chapter consists of Sections 77 to 85.

13. Section 77 of the Act, 1959 deals with transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases. Section 78 deals with encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. Section 79 deals with mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner. Section 79-A deals with encroachment by groups of persons on 6 land belonging to charitable religious institutions and their eviction. Section 79-B deals with penalty for offences in connection with encroachment. Section 79-C deals with recovery of moneys due to religious institution, as arrears of land revenue. Section 80 deals with eviction of lessees, licensees or mortgagees with possession in certain cases. Section 81 provides for an appeal against Joint Commissioner or the orders of Deputy Commissioner passed under Section 80. Section 82 provides for payment of Compensation. Section 83 deals with constitution of Tribunal. Section 84 deals with suits against the award. Section 85 provides for protection of action taken under Chapter VII of the Act, 1959.”



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17. The above order had been passed in favour of the occupant since the respondents therein had failed to follow the due process of law. However, in this case, the Commissioner, Kanyakumari Municipality, had already provided an opportunity to the petitioner by virtue of notice dated 11.11.2025 and the said aspect was duly recorded in the order dated 19.01.2026 passed by the Hon'ble Division Bench of this Court. After considering all the aspects, the order for removal of unauthorised constructions came to be passed. In such case, the question of not following the due process of law will not at all come into picture and hence, the said case law will not be applicable to the present petition.

18. In view of the above, this Court does not find any merits in this writ petition. Therefore, this writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

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Index : Yes/No
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KRISHNAN RAMASAMY, J.

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