

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-07-2026

CORAM

THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.20792 of 2025

WEB COPY

1.R.Jayasree,
D/o. K.Sethuraman
Residing at
No.45, Ponniammal Koil Street,
Adyar, Chennai – 600 020.

2.Suresh,
S/o. K.Sethuraman,
Residing at
No.45, Ponniammal Koil Street,
Adyar, Chennai – 600 020.

3.S.Sriram,
S/o. K.Sethuraman,
Residing at
No.45, Ponniammal Koil Street,
Adyar, Chennai – 600 020.

...Petitioners

Vs.

1.The Sub Registrar,
Kamaraj Avenue, Adyar,
Chennai – 600 020.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai – 600 028.

3.The Commissioner (HR & CE),
117, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.



4.Arulmigu Arunachaleshwarar Temple,
Represented by its Joint Commissioner,
cum Executive Officer,
Sannathi Street,
Tiruvannamalai – 600 601.

...Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st Respondent herein to register the General Power of Attorney dated 24.01.2025 executed by the Petitioners in favour of the developer with respect to the bearing New Door No.45/40 (Old Door No.27), Plot No.173, Ponniamman Koil Street, Urur, Adyar, Chennai – 600 020, comprised in S.No.41, Block No.008, T.S.No.26 of Urur Village, Velachery Taluk, Chennai District measuring an extent of 2,352 Square Feet, without insisting upon a “No Objection Certificate” from the 3rd and 4th Respondents.

For Petitioners : Mr.Rajnish Pathiyil
for Ms.S.Akila
& Ms.Samyuktha Jeyaprakash

For Respondents – 1 & 2: Mr.Dominic S. David,
Government Counsel

For Respondents – 3 & 4: Mr.V.Chandraprabu,
Government Counsel

ORDER

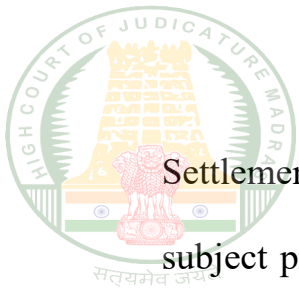
With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The relief sought in this Writ Petition is to direct the 1st Respondent to register the General Power of Attorney dated 24.01.2025 executed by the



Petitioners in favour of the Developer in respect of the house site measuring an extent of 2,352 Square Feet, bearing New Door No.45/40 (Old Door No.27), Plot No.173, Ponniamman Koil Street, Urur, Adyar, Chennai – 600 020, comprised in S.No.41, Block No.008, T.S.No.26 of Urur Village, Velachery Taluk, Chennai District (hereinafter referred to as “subject property”) without insisting the Petitioners to obtain No Objection Certificate from the Respondents 3 & 4.

3. The case of the Petitioners is that they are the joint and absolute owners of the subject property. The subject property originally belonged to the 4th Respondent Temple. The Commissioner of HR & CE vide Order dated 09.04.1956 in Application No.4 of 1956, granted sanction to sell the subject property in a public auction, pursuant to which, 4th Respondent Temple sold the subject property to the Theosophical Society, Adyar by way of Sale Deed dated 27.10.1959 which was registered as Document No.2523 of 1959 on the file of Sub Registrar Office, Saidapet. The said Theosophical Society sold the subject property to one Mrs.S.Kamala (Petitioners’ mother) vide Sale Deed dated 10.05.1974 which was registered as Document No.1531 of 1974 on the file of Sub Registrar Office, Saidapet. Thereafter, Petitioners’ mother settled the subject property in favour of Petitioners vide two Settlement Deeds dated 17.03.2008, which were registered as Document Nos.478 & 479 of 2008 on the file of Sub Registrar Office, Adyar. From the date of execution of said



WEB COPY

Settlement Deeds, Petitioners have been in possession and enjoyment of the subject property. All the Revenue Records and Tax Receipts in respect of the subject property are in the name of Petitioners. While so, Petitioners intended to construct a residential apartment in the subject property and hence, they had entered into a Joint Development Agreement dated 17.11.2024 with one Mr.S.Raghul, a Developer. Further, Petitioners had appointed the said Developer as their General Power of Attorney Agent to deal with the subject property by way of General Power of Attorney dated 24.01.2025 and presented the said General Power of Attorney for registration before the 1st Respondent. However, 1st Respondent has refused to register the said General Power of Attorney by citing the reason that the subject property belongs to the 4th Respondent Temple and instructed the Petitioner to obtain No Objection Certificate from the Authorities of the 4th Respondent Temple to proceed with the registration. Therefore, Petitioners vide Letter dated 29.03.2025, requested the Respondents 3 & 4 to issue a No Objection Certificate setting out the factum of earlier transactions. That apart, Petitioners submitted a Representation dated 29.03.2025 before the Respondents 1 & 2, requesting to proceed with the registration of General Power of Attorney presented by them. However, Respondents 1 & 2 have not yet considered the representation submitted by the Petitioners. Hence, left with no other alternative, Petitioners have filed this Writ Petition for the relief stated *supra*.



4. The learned counsel for the Petitioners submitted that when the 4th Respondent Temple sold the subject property to the Theosophical Society, Adyar by way of Sale Deed dated 27.10.1959, 4th Respondent Temple transferred all its rights, title and interest over the subject property to the said Theosophical Society. Now, 4th Respondent Temple has no right, title and interest over the subject property.

4.1. It is further submitted by the learned counsel for the Petitioners that Petitioners' mother settled the subject property in favour of Petitioners vide two Settlement Deeds dated 17.03.2008, which were registered as Document Nos.478 & 479 of 2008 on the file of Sub Registrar Office, Adyar. From the date of execution of said Settlement Deeds, Petitioners have been in possession and enjoyment of the subject property without any hindrance. As on date, the TSLR Extract in respect of the subject property indicates the names of Petitioners and the Encumbrance Certificate in respect of the subject property would also indicate the various sale transactions which had taken place subsequent to the Sale Deed dated 27.10.1959 and the same does not reflect any of the particulars either in the name of Arulmigu Arunachaleswarar Temple or in the name of HR & CE Department.

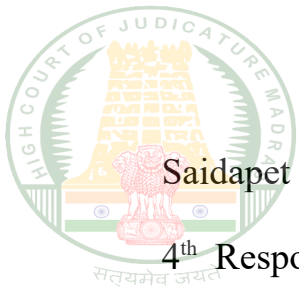
4.2. The learned counsel for the Petitioners also submitted that without issuing any Refusal Check Slip to the Petitioners, 1st Respondent has refused to



register the General Power of Attorney dated 24.01.2025 presented for registration and directed the Petitioners to obtain No Objection Certificate from the Authorities of the 4th Respondent Temple to proceed with the registration. If the subject property belongs to the 4th Respondent Temple, 3rd Respondent would have initiated appropriate proceedings against the Petitioners in accordance with law, but, till date, 3rd Respondent did not take any action against the Petitioners.

5. The learned Government Counsel appearing on behalf of the Respondents 3 & 4 submitted that the subject property was originally belonged to the 4th Respondent Temple. The Executive Officer of the 4th Respondent Temple filed an Application before the 3rd Respondent seeking permission to sell the subject property belonging to the 4th Respondent Temple in a public auction. The 3rd Respondent vide Order dated 09.04.1956, granted sanction for selling the subject property in a public auction. The Theosophical Society, Adyar had purchased the subject property from the 4th Respondent Temple vide Sale Deed dated 27.10.1959 which was registered as Document No.2523 of 1959 on the file of Sub Registrar Office, Saidapet.

5.1. It is further submitted by the learned Government Counsel for the Respondents 3 & 4 that originally one Ms.Ammayi Ammal had gifted a land measuring an extent of 1 Acres 30 Cents comprised in S.No.41 of Urur Village,



Saidapet Taluk, Chengalpet District to Mr.Sarkarayya Panariyar (Trustee of the

4th Respondent Temple) by way of a registered Transfer Deed (Will) dated

30.04.1909. In the said Transfer Deed (Will), it was mentioned that the income

from the said land should be utilized for performing “Kaingarium” for the 4th

Respondent Temple and it was also mentioned that if the said land is sold by the

Trustees or others, then the said sale is not valid. However, without considering

the said Transfer Deed (Will), 3rd Respondent had passed the Order dated

09.04.1956 granting sanction to sell the said land in a public auction which is

against the wish of the donor viz., M.Ammayi Ammal (donor of the subject

property). In the said Sanction Order, it was not mentioned that the sale of the

subject property is essential for the purpose of conducting the daily rituals and

poojas in the 4th Respondent Temple and it was also not mentioned that the sale

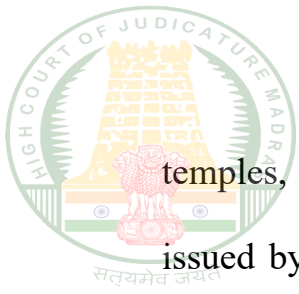
of the subject property is in line with the wish of the donor. Therefore, the

learned Government Counsel submitted that Sanction Order dated 09.04.1956

passed by the 3rd Respondent is invalid since it was against the wish of

M.Ammayi Ammal (donor of the subject property).

5.2. The learned Government Counsel for the Respondents 3 & 4 drew the attention of this Court to the ***Common Order dated 07.06.2021 in Suo Motu W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018***, wherein, the Division Bench of this Court has issued 75 directions to the Respondent Authorities therein for the purpose of protecting the historical monuments including

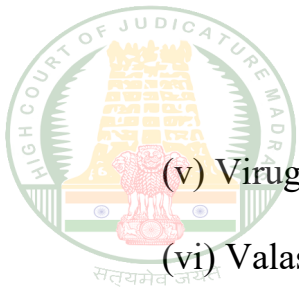


temples, idols, antiques, manuscripts, murals, etc. Out of the 75 directions issued by the Division Bench of this Court, Direction No.33 is the Trustee or Administrator cannot sell a temple property against the wish of the donor. For better appreciation, Direction No.33 issued by the Division Bench of this Court in the said common order is extracted hereunder:

“(33) The State Government or the Commissioner of the HR & CE Department, who are the Trustee/Administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests.”

5.3. It is further submitted by the learned Government Counsel for the Respondents 3 & 4 that 3rd Respondent had filed two Review Applications in Rev.Appl.(W) Nos.169 & 170 of 2021 before the Division Bench of this Court seeking to review the Common Order dated 07.06.2021 passed in *Suo Motu* W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018. During the pendency of said Review Applications, three persons had filed a Writ Petition in W.P.No.12697 of 2022 before this Court praying for issuance of a writ of declaration, declaring that

- (i) Mylai Sri Kapaleeswarar Temple
- (ii) Vadpalani Murugan Temple
- (iii) Vadapalani Sri Vengeeswarar Temple
- (iv) Vadapalani Sri Alagar Perumal Temple



(v) Virugambakkam Sri Sundaravardharaja Perumal Temple

(vi) Valasaravakkam Sri Velveeswarar Temple

(vii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal Temple

(viii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal

Temple Tank which are impacted under the Corridor 4 of the Phase II of the

Chennai Metro Rail Project, as ancient monuments and Heritage Structures

under the Ancient Monuments and Archaeological Sites and Remains Act, 1958

read with Article 26 of the Constitution of India. The First Bench of this Court

vide **Order dated 20.06.2022**, closed **W.P.No.12697 of 2022** with the following

observation:

“11. It is settled law that any judgment of the Court running counter to any statutory provision would be per incuriam, as has been held by the Apex Court in the case of Dr. Shah Faesal and others v. Union of India and another, (2020) 4 SCC 1.

12. If a Court issued direction going contrary to the statutory provision, then such direction is to be treated as per incuriam. It is more so when the Court has power to declare any provision as ultra vires, if it is hit by the provisions of the Constitution of India or other statutory provisions. But unless it is so declared as ultra vires, it cannot be nullified by a direction and such direction given is to be treated as per incuriam. In the light of the aforesaid, what will prevail is the provision of law, that is Section 34 of the Act of 1959 and Section 3 of the Act of 1997. Thus, the provisions having not been declared as ultra vires, the competent authorities are empowered to exercise the said provisions. Therefore, it needs to be clarified that if the direction quoted in paragraph 33 of the judgment in the suo motu writ petition cited supra runs counter to any of the statutory provision, it may be treated as per incuriam.

13. In view of the finding recorded above, we hold that if the lands belonging to the temples, like vacant lands, or used lands for commercial purposes are required, it can be acquired for public purposes by applying the provisions of law. In doing so, it has already been admitted that no heritage structures or ancient monuments of the temples would be affected.”



5.4. Thereafter, the Division Bench of this Court has disposed of the aforesaid Rev.Appl.(W) Nos.169 & 170 of 2021 vide Common Order dated 02.06.2023. In Paragraph No.16 of the **Common Order dated 02.06.2023 passed in Rev.Appl.(W) Nos.169 & 170 of 2021**, the Division Bench of this Court has held that a donor's will and intention are paramount, prohibiting the State or HR & CE Department from alienating temple properties against the original charitable intent and the Authorities cannot bypass this intent through executive actions or by invoking public purpose to divert property from its designated use. For better appreciation, the relevant portion of the said common order is extracted hereinbelow:

"16. With regard to direction no.33, it will be necessary to look into the relevant provision of the HR&CE Act, which reads as follows:

"34. Alienation of immovable Trust property:- (a) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published, in such manner as may be prescribed, inviting objections and suggestions with respect thereto, and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner. Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.

Explanation:- (4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to or given or endowed for the purpose of any religious institution and the Commissioner shall give effect to all such directions."

From the above provision, it is clear that the exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property is generally null and void. The exception being the prior sanction of the



WEB COPY

Commissioner for the necessity or beneficial to the institution. It is pertinent to mention that the word 'necessity' used therein would have to be related to the necessity of the temple or institution and not for the necessity of third parties. Necessity and beneficial intent being a pre-requisite condition, must be satisfied before the decision to even lease out the property for more than five years. Such a decision must be taken for the rational consideration. Therefore, this court is of the opinion that for alienation of the immovable properties belonging to the religious institutions, all the conditions stipulated in the proviso like publication, calling for objections and previous sanction from the Government and explanation to Section 34 of the HR&CE Act have to be scrupulously followed and it has to be established that such alienation is beneficial to the interest of the temple or institution and that, the alienation is the only option to ensure that the activities of temples including performance of rituals will be disturbed, if the property is not sold. It must also be for necessity or beneficial for the temple or the religious institution. Before the properties are alienated, the other provisions regarding common good fund, funds of other temples to be used for the preservation and other activities of the other temples, contribution from the public, will have to be taken into consideration. Even thereafter, if there is a requirement, a decision on sale of property can be taken, that too, after following due procedure as contemplated under the HR&CE Act. The government lands are to be first utilized for public purpose before the lands belonging to the temples are touched. The directions to be issued by the Government under the explanation should also be in conformity with the above principles. It is significant to mention here that a Division Bench of this Court in the judgment in W.A No. 2831 of 2002 has already held that temple properties cannot be acquired. There are Government orders in G.O.MS.No.1266 (Rev.) dated 30.05.1981 and G.O.Ms.No.1630 dated 26.09.1984 on the subject. As such, the temple properties cannot be gifted away against the interest of the institution. The intention with which the charities given by the donor cannot be shun away at the pleasure of the government or the Commissioner. The Will of the donor is of paramount importance, which cannot be surpassed at executive pleasure against the interest of the temples. At this juncture, it is necessary to place on record the importance of maintenance of accounts regarding the contribution by the donors, hundi collection, expenditure and importance of independent audit performed by an authority not forming part of state functionary. Therefore, the alienation by the government can only be in consonance with the provisions and object of the HR&CE Act; and that, the actions taken by the HR&CE Department shall always be subject to judicial review as this Court being one of the guardians of the rights guaranteed by the constitution, is vested with such power."

5.5. The learned Government Counsel for the Respondents 3 & 4 submitted that pursuant to the **Common Order dated 07.06.2021 in Suo Motu**



W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018 and Common Order dated 02.06.2023 in Rev.Appl.(W) Nos.169 & 170 of 2021 passed by the Division

Bench of this Court, 3rd Respondent had issued a circular directing the Temple Authorities not to register any document belonging to the temple.

6. In reply, learned counsel for the Petitioners submitted that in the present case, the Executive Officer of the 4th Respondent Temple sold the subject property to Theosophical Society, Adyar only after the 3rd Respondent (Commissioner, HR & CE Department) granted sanction to sell the subject property in a public auction. Therefore, there is no violation of the provisions of Section 34(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “HR & CE Act”).

7. Heard the learned counsel for the Petitioners and learned Government Counsel appearing for the Respondents 1 & 2.

8. In the present case, one M.Ammayi Ammal had gifted the subject property to 4th Respondent Temple by way of a registered Transfer Deed (Will) dated 30.04.1909. The Executive Officer of 4th Respondent Temple filed an Application before the 3rd Respondent seeking permission to sell the subject property belonging to the 4th Respondent Temple in a public auction. The 3rd Respondent vide Order dated 09.04.1956, granted sanction to sell the subject



property by way of a public auction, pursuant to the said order, the Executive Officer of the 4th Respondent Temple sold the subject property to Theosophical Society, Adyar vide Sale Deed dated 27.10.1959. Thereafter, various sale transactions had taken place in respect of the subject property. The Petitioners' mother settled the subject property in favour of Petitioners vide two Settlement Deeds dated 17.03.2008. From the date of execution of said Settlement Deeds, Petitioners have been in possession and enjoyment of the subject property. All the Revenue Records and Tax Receipts in respect of the subject property are in the name of Petitioners. While so, Petitioners appointed Mr.S.Raghul, a Developer as their General Power of Attorney Agent by way of General Power of Attorney dated 24.01.2025 and presented the said General Power of Attorney for registration before the 1st Respondent. However, 1st Respondent has refused to register the said General Power of Attorney by citing the reason that the subject property belongs to the 4th Respondent Temple and instructed the Petitioners to obtain No Objection Certificate from the Authorities of the 4th Respondent Temple to proceed with the registration. Therefore, Petitioners requested the Respondents 3 & 4 to issue a No Objection Certificate for registration of General Power of Attorney and also, submitted a representation before the Respondents 1 & 2, requesting to proceed with the registration of General Power of Attorney dated 24.01.2025. However, there was no response for the same. Hence, this Writ Petition.



9. At this juncture, it is pertinent to state that in the ***Order dated 20.06.2022 in W.P.No.12697 of 2022***, the First Bench of this Court has clarified that if the direction quoted in paragraph 33 of the ***Common Order dated 07.06.2021 in Suo Motu W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018*** passed by the Division Bench of this Court runs counter to any of the statutory provision, it may be treated as per incuriam.

10. As per the provisions of Section 34(1) of the HR & CE Act, any exchange, sale, mortgage or lease exceeding five years of any immovable property belonging to a religious institution requires the prior written sanction of the Commissioner, HR & CE Department. For the sake of clarity, Section 34(1) of the HR & CE Act is extracted hereinbelow:

“34. Alienation of immovable trust property.

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by [the Commissioner] [Substituted by Tamil Nadu Act 39 of 1996.] as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by [the Commissioner] [Substituted by Tamil Nadu Act 39 of 1996.]:

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.] [Inserted by section 2(1) of the Tamil Nadu Hindu Religious and Charitable Endowments (Second Amendment) Act, 1998 (Tamil Nadu Act 38 of 1998).]

Explanation. - Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to

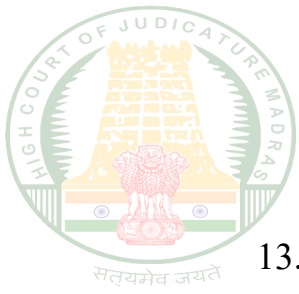


any condition or not, be deemed to be a lease for a period exceeding five years.”

WEB COPY

11. As far as this case is concerned, the Executive Officer of the 4th Respondent Temple filed an Application before the 3rd Respondent seeking permission to sell the subject property belonging to 4th Respondent Temple in a public auction. Considering the request made by the Executive Officer of the 4th Respondent Temple, exercising the power under Section 34(1) of the HR & CE Act, 3rd Respondent (Commissioner, HR & CE Department) had passed the Order dated 09.04.1956 granting sanction to sell the subject property by way of a public auction, pursuant to the said order, on behalf of the 4th Respondent Temple its Executive Officer sold the subject property to the Theosophical Society, Adyar. Hence, there is no violation of the rule contemplated under Section 34(1) of the HR & CE Act.

12. When the 4th Respondent Temple sold the subject property to the Theosophical Society, Adyar vide Sale Deed dated 27.10.1959, 4th Respondent Temple transferred all its rights, title and interest over the subject property to the said Theosophical Society. Therefore, unless and until, the Order dated 09.04.1956 passed by the 3rd Respondent and the Sale Deed dated 27.10.1959 are set aside, Respondents 3 & 4 have no right to make any objection for registration of General Power of Attorney dated 24.01.2025.



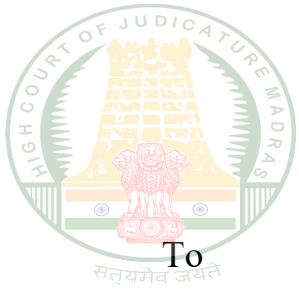
13. Considering the above facts and circumstances of the case, this Court is inclined to allow this Writ Petition. Accordingly, this Writ Petition is allowed. The Petitioners are directed to re-present the General Power of Attorney dated 24.01.2025 for registration before the 1st Respondent. Upon such re-presentation of General Power of Attorney by the Petitioners, 1st Respondent shall register the General Power of Attorney dated 24.01.2025, if it is otherwise in order, within a period of one week from the date of re-presentation of said General Power of Attorney by the Petitioners. However, there shall be no order as to costs.

02-07-2026

mrr

Index: Yes/No

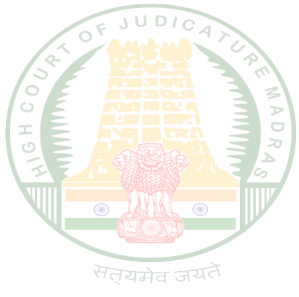
Speaking Order (or) Non-Speaking Order



To

WEB COPY

- 1.The Sub Registrar,
Kamaraj Avenue, Adyar,
Chennai – 600 020.
- 2.The Inspector General of Registration,
No.100, Santhome High Road,
Raja Annamalaipuram,
Chennai – 600 028.
- 3.The Commissioner (HR & CE),
117, Uthamar Gandhi Road,
Nungambakkam,
Chennai – 600 034.
- 4.The Joint Commissioner cum Executive Officer,
Arulmigu Vadapalani Andavar Kovil,
Sannathi Street,
Tiruvannamalai – 600 601.



WEB COPY

W.P.No.20792 of 2



KRISHNAN RAMASAMY, J.

mrr

W.P.No.20792 of 2025

02-07-2026