

(2026) 03 KL CK 0780

In the High Court Of Kerala

Case No : Writ Petition (C) No. 3407, 8011 Of 2026

Vijesh C.K

APPELLANT

Vs

State Of Kerala Represented By Chief Secretary To
Government

RESPONDENT

Date of Decision : 23-03-2026

Acts Referred:

Constitution of India, 1950 — Article 226

Madras Hindu Religious & Charitable Endowments Act, 1951 — Section 29

Citation : (2026) 03 KL CK 0780

Hon'ble Judges : Raja Vijayaraghavan V, J;K. V. Jayakumar, J

Bench : Division Bench

**Advocate : K.M.Sathyanatha Menon, K.Mohanakannan, Mahesh V
Ramakrishnan, R.Surendran, S Rajmohan, R. Ranjanie**

Final Decision : Disposed Of

Judgement

K. V. Jayakumar, J

1. W.P(C) No. 3407 of 2026 is preferred by Sri. Vijesh C. K. challenging the proposed road widening project undertaken by the Public Works Department (PWD) near Madayikavu Bhagavathy Temple at Madayipara, Kannur. W.P(C). No. 8011 of 2026 is filed by Bachi Sulaimantakath Sameera seeking to restrain respondents 3 to 5, i.e., the temple authorities and one T.V. Rajesh, from trespassing into the property of the petitioner for the widening of the road leading to Madayikavu temple. Since the controversy involved in both these Writ Petitions pertains to the widening of the road leading to Madayikavu Bhagavathy temple, we deem it appropriate to dispose of these matters together by a common judgment. W.P(C) No. 3407/2026 is taken as the lead case and the parties and exhibits are referred to in this judgment as stated in the said Writ Petition, unless otherwise specifically stated.

2. Brief facts necessary for the disposal of the Writ Petitions are as follows:

The writ petitioner in W.P.(C). No. 3407/2026 states that he is an ardent worshipper of Sree Madayikavu Bhagavathy Temple, situated on the top of a rock popularly known as 'Madayipara'. The said Madayipara is situated about 40 meters above the sea level and is rich in fresh water. According to the petitioner, the road leading to the Madayipara temple from the PWD road has a width of 3.5 metres and a length of about 300 meters. The petitioner contends that the said road is in a dilapidated condition for the past several years. Now, there is a proposal for the widening and renovation of the road leading to the temple, expending a sum of Rs. 1.42 Crores. According to the petitioner, the existing road, having a width of 3.5 metres, is being widened to 8.5 metres without acquiring the temple land and without awarding fair compensation to the temple authorities.

3. The petitioner further contends that Madayipara is well known for its geographical peculiarities. If the road is widened for 8.5 meters, it would adversely affect the biodiversity, natural flora and fauna of the landscape. The petitioner has produced Ext.P1 series photographs to substantiate his contentions. The petitioner asserts that the PWD department or the Malabar Devaswom Board have no right or authority to widen the road by destroying the temple property and its biodiversity. It is in this backdrop that the petitioner preferred this Writ Petition seeking the following reliefs:

(i) Issue a writ of mandamus or any other appropriate writ, order or direction restraining the respondents, their officers, agents and contractors from widening or constructing the temple road by encroaching upon or altering any portion of the Devaswom/temple property of Sree Madayikavu Bhagavathy Temple or the Madayippara landscape.

(ii) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the 6th respondent, Malabar Devaswom Board and its officers to protect and preserve the temple property, ponds, natural water bodies and ecological features of Madayippara, and to prevent any trespass, encroachment or destruction thereof by any authority or contractor.

4. The case of the petitioner in W.P.(C) No.8011/2026 is that she is the owner of 0.12 Ares of property in Re-survey No.23/380 of Madayi Amsom Desom. According to the petitioner, one Krishna Pidarar had the leasehold right for the said property and later, he got Purchase Certificate from the Land Tribunal, Kannur, in O.A.No.146/1976. The said Krishna Pidarar has assigned the property to the father of the petitioner as per assignment deed No.188/1980 of SRO Payangadi. The father of the petitioner, Bachi Sulaimantakath Abdul Khader, has executed gift deed No.3966/1996 of SRO, Payangadi in favour of the petitioner. She produced a copy of the deed which is marked as Ext.P1. The petitioner states that she is the absolute owner in possession and enjoyment of the property. Ext.P2 is the copy of basic tax paid by her.

5. The petitioner asserts that on 09.02.2026, certain persons trespassed into

the property and measured it. On enquiry, she came to know that the 5th respondent contracted and engaged in the work of widening of the road leading to Madayikavu Devaswom. According to the petitioner, the widening of the said road is effected by encroaching a portion of her property. The petitioner instituted O.S.No.45 of 2026 in the Munsiff Court, Payyannur seeking a permanent prohibitory injunction against the respondents from encroaching into the property for the purpose of widening the road. Ext.P3 is the copy of the plaint and Ext.P4 is the report of the Advocate Commissioner. It is with these assertions, the petitioner approached this Court seeking the following reliefs:

“(i) To issue a writ of mandamus or any other appropriate writ, order restraining the respondents 3 and 5 from trespassing into the 0.12 Are of property in Re survey No. 23/380 (Old sub division 23/1A2 and old survey No.49/1A, 627A) of Madayi amsom, desom for widening the road to the Madyikavu temple otherwise than under law”

6. The 5th respondent in WP(C) No.3047/2026, the Executive Engineer, PWD, filed a counter affidavit contending that the road leading to Madayikavu is very narrow and in a bad condition. It is difficult for the devotees to drive vehicles through the road. Several complaints were made to MLA Kalliassery by the public about the pathetic condition of the said road. It is stated in the counter that on 31.12.2024, the Chirakkal Kovilakam had relinquished the land for the widening of the road from 6 to 8.50 meters and the site was handed over to PWD by the panchayat for improving the road as per Ext.R5(b) letter dated 20.06.2025. Thereafter, the MLA Kalliassery gave administrative sanction of Rs. 1.42 crores for PWD Section Madayi to prepare the estimate for improving the road to BM & BC standard. Thereupon, the estimate was prepared for widening the road from 6 to 8.5 meters by providing 5.5 meter BM & BC and on either side 1.5 meter footpath. The minimum width required for two-way traffic is 5.5 meters. It is further stated that an agreement was executed by the Contractor, Sri. Rajesh T.V., the 10th respondent, on 20.11.2025. It is contended that the extra width of land 2.50 meters is freely surrendered by Chirakkal kovilakam and there is no need for conducting land acquisition procedure. The proposed road would be constructed without disturbing the biodiversity of Madayippara. The Contractor has already started the work.

7. The 8th respondent, Executive Officer of the temple, had also filed a counter statement with more or less similar contentions as those of the 5th respondent.

8. Sri. K.M. Satyanatha Menon, learned counsel for the petitioner submitted that if the road is widened from 3.5 to 8 meters, it would adversely affect the biodiversity of Madayipara. In the summer season, migrating birds would come to the site. There are peculiar flora and fauna in the said rock. The second contention is that the proposed widening is effected without any acquisition proceedings and by trespassing into the property of the temple.

9. The learned counsel for the petitioner submitted that the proposed widening of the road by encroaching to the property of the temple is without obtaining statutory sanction as mandated under Section 29 of the Madras Hindu Religious & Charitable Endowments Act, 1951 (for the sake of brevity, 'the Madras HR & CE Act') and therefore it is unsustainable in law. The learned counsel pointed out that the proposed widening of the road by encroaching upon the existing pond has serious environmental consequences. Madayipara is an ecologically fragile area with unique hydrological features. The learned counsel further pointed out that 40 tamarind trees were already cut and removed for the widening of the road.

10. In response, Sri. Mohanakannan, learned counsel for the 8th respondent, would submit that the width of the existing road is 6 meters, of which the width of the tarred portion is 3.5 meters. According to the learned counsel, the existing road is narrow and in a pathetic condition and so the devotees are facing hardships to reach the temple. The Counsel submits that for improving and widening the road, no transfer of ownership is necessary. The proposed project would, in no way affect the biodiversity of the Madayipara.

11. Smt. Ranjanie, the learned Standing Counsel for the Malabar Devaswom Board, Sri. Mahesh V. Ramakrishanan, learned counsel appearing for the 9th respondent in WP(C) No. 3407/2026 and Sri. S. Rajmohan, learned Senior Government Pleader supported the proposed widening project. The Counsel would argue that a project for the development and improvement cannot be stalled by invoking environmental issues.

12. Sri. Jayakumar Namboodiri T.V, learned counsel for the petitioner in WP(C) No.8011/2026 submitted that for the purpose of the widening of the road, a portion of the property of the petitioner is encroached.

13. We have heard the submissions of Sri. K.M. Satyanatha Menon, learned counsel for the petitioner in W.P.(C) No. 3407/2026, Smt. Ranjanie, the learned Standing Counsel for the Malabar Devaswom Board, Sri. Mahesh V. Ramakrishanan, learned counsel appearing for the 9th respondent in WP(C) No. 3407/2026, and Sri. S. Rajmohan, learned Senior Government Pleader. We have also heard the submissions of Sri. Jayakumar Namboodiri T.V., learned counsel for the petitioner in W.P.(C) No.8011/2026.

14. The principal issues germane to these Writ Petitions pertain to whether the proposed widening of the roadway accessing the Madayi temple constitutes an encroachment upon temple land, and the potential adverse impacts of the proposed project upon the biodiversity of Madayipara.

15. Before further discussion, it may be useful to consider the significance of Madayipara, its ecological features and biodiversity.

Madayipara

16. Madayipara is a flat-topped laterite plateau in Kannur district, Kerala,

near Pazhayangadi on the banks of the Kuppam River. Covering about 600–700 acres and rising 40–47 m above sea level, the plateau offers wide views of nearby wetlands and the coast near Ezhimala. It offers panoramic views of the surrounding countryside and sea, with seasonal colour transformations—green grasses in the monsoon, golden hues in summer, and blue flower carpets in spring. It is an ecological paradise rich in a wide variety of flora and fauna. Madayipara is a biodiversity hotspot, with over 500 plant species, including rare and endemic plants such as *Rotala malabarica*, *Nymphoides krishnakesara*, *Justicia ekakusuma*, *Eriocaulon madayiparensis* etc. *Lindernia madayiparensis* is a rare, endemic annual herb discovered in 2012 on the Madayipara laterite hills. Madayipara hosts diverse butterfly and bird species that play crucial ecological roles in pollination, pest control, and nutrient cycling. Key species include the Atlas butterfly (the largest in Kerala), Common Gull, Giant Orange Tip, Clipper, Tawny Coster, Painted Lady (migratory), and the dominant Nymphalidae family. It also hosts a variety of species of birds, including Wetland birds, Terrestrial/insectivores, local migrants, and long-distance Palaearctic/Himalayan migrants that use it as a key stopover. Madayipara has an irreplaceable ecological, hydrological, geological, and cultural value.

17. Bearing in mind the unique and ecologically sensitive features of Madayipara, we shall now address the rival submissions advanced by the learned counsel. The principal contention of the learned counsel for the petitioner in W.P.(C) No. 3407/2026 is that the proposed widening of the road would adversely affect the biodiversity of Madayipara and result in irreversible damage to its natural flora and fauna. Per contra, the learned counsel appearing for the 8th respondent submits that the existing road has a total width of about 6 meters, of which only 3.5 meters is tarred, and that the road is presently in a dilapidated condition requiring urgent attention. It is further pointed out that, as per standard norms, the minimum width required for a functional two-way road is 5 meters. In such circumstances, it is contended that the proposed work is not only necessary but unavoidable, and that it can be executed in a manner that would not cause any adverse impact on the biodiversity of Madayipara.

18. In *NHAI v. Pandarinathan Govindarajulu* (2021) 6 SCC 693, the Apex Court placing reliance on *Indian Council For Enviro-Legal Action v. Union of India*, [(1996) 5 SCC 281] and *Vellore Citizens' Welfare Forum v. Union of India*, [(1996) 5 SCC 647], observed that while economic development should not be allowed at the cost of ecology or by causing widespread environmental destruction, the necessity to preserve ecology and environment should not hamper economic and other development. Both development and environment must go hand in hand. In other words, there should not be development at the cost of the environment and vice versa, but there should be development while taking due care and ensuring the protection of the environment. The traditional concept that development and ecology are opposed to each other is no longer acceptable.

19. In *Auroville Foundation v. Navroz Kersasp Mody* (2025) 4 SCC 150, the Apex Court reiterated that the traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable development" has been accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of supporting ecosystems. "Sustainable development", as defined by Brundtland Report means "development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The "sustainable development" therefore has been held to be a balancing concept between ecology and development as a part of customary international law.

20. Having regard to the legal principles laid down above, and on considering the limited extent and nature of the proposed road widening, we are of the view that the likely environmental impact is minimal and does not pose any real or substantial threat to the ecology, flora, or fauna of Madayipara. On the contrary, repairing and upgrading the existing road in accordance with IRC standards would significantly enhance safety for the devotees who frequently visit the temple, and would contribute positively to the overall upkeep and accessibility of the area.

21. The next contention is that a prior sanction is required for the widening of the road under Section 29 of the Madras HR & CE Act. Section 29 of the Act reads thus:

"29. Alienation of immovable trust property.

(1) Any exchange, sale or mortgage and any lease 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 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, if he is satisfied that owing to any emergency or for some other reason to be specified in the order according sanction, it is not reasonably practicable to follow the procedure prescribed in the foregoing proviso, may, with the previous sanction of the Government dispense with such procedure.

(2) When according such sanction, the Commissioner may impose such conditions and give such directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of mortgage, regarding the discharge of the same within reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be

communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4)The trustee may within three months from the date of this receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order, appeal to the Government to modify the order or set it aside.

(5)Nothing contained in this section shall apply to the inams referred to in section 35.”

22. Section 29 of the Madras HR & CE Act makes it clear that a prior sanction from the Commissioner is required if the transaction is exchange, sale, mortgage or lease of any immovable property of a religious institution.

23. Ext.R8(a) communication issued by the Chirackal Kovilakam trustee would indicate that the proposed project is intended to avoid the hardships and inconveniences of the devotees. Ext. R8(b) letter issued by the trustee of the temple dated 04.01.2025 shows that permission is granted to widen the road from 6 meters to 8.5 meters.

24. The temporary surrender of property for the purpose of widening the road cannot be construed as a transfer of interest in immovable property, which requires prior sanction under Section 29 of the Madras HR & CE Act. Therefore, we are unable to accept the contention of the petitioner that the proposed project is legally unsustainable.

25. Insofar as the reliefs sought in WP(C) No. 8011/2026, we note that the writ petitioner had already approached the Civil Court and instituted O.S.No.45/2026. This Court, invoking the power of judicial review under Article 226 of the Constitution of India, cannot adjudicate the disputed questions of fact.

26. Having regard to the submissions advanced by the learned counsel appearing for the respective parties, and upon a careful perusal of the materials placed on record, we are of the considered view that the reliefs sought in these Writ Petitions cannot be granted in the manner prayed for.

27. However, taking into account the concerns expressed on both sides, we deem it appropriate to dispose of these Writ Petitions with the following directions, so as to balance developmental requirements with the need for environmental protection:

1. The proposed road widening project shall be undertaken strictly in a manner that does not cause any damage or disturbance to the biodiversity of Madayipara, including its ponds, water bodies, and the existing natural flora and fauna.

2. The respondents 6 to 9 in WPC 3407/2026 shall make arrangements to ensure that the 10th respondent–Contractor undertakes afforestation by planting not less than 400 trees, consisting of species indigenous to and compatible with the

geographical and ecological features of the locality. The planting shall be carried out at appropriate locations, in consultation with the Divisional Forest Officer (DFO) having jurisdiction over the area, and shall be completed within the month of June 2026.

3. The Principal Chief Conservator of Forests, or such other competent authority of the Forest Department, shall, in consultation with all relevant stakeholders, formulate and finalise a comprehensive afforestation scheme covering a larger extent of Madayipara. The said scheme shall be placed before this Court on or before 15th July 2026, and shall clearly set out the measures proposed to ensure long-term preservation of the biodiversity and ecological integrity of the area.

4. The 10th respondent shall maintain videographic records of the afforestation activities undertaken and shall place the same on record before this Court on or before 15th July 2026, along with a duly sworn affidavit detailing the steps taken, without fail.

5. The 5th respondent, Executive Engineer, Public Works Department, shall monitor and oversee the implementation of the aforesaid afforestation measures and shall file an affidavit before this Court on or before 15th July 2026, setting out the status of compliance and relevant particulars.

6. The 8th and 9th respondents shall ensure proper and regular watering, care, and maintenance of the planted saplings, in coordination with the concerned Divisional Forest Officer.

7. The Secretary, Madai Grama Panchayat, shall ensure strict and continuous adherence to the green protocols issued by the State Government from time to time, so as to safeguard and preserve the ecological balance and biodiversity of Madayipara.

Post this matter for compliance report on 16.07.2026.