



WP(MD)No.18600 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.02.2024

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CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**WP(MD)No.18600 of 2013 and
SA(MD)No.464 of 2011 and
WMP(MD)No.2 of 2013**

WP(MD)No18600 of 2013

1.S.Padmanaban (deceased)

2.P.Subramanian

3.Ramesh

[P-3 is impleaded vide order
dated 09.11.2023 in WMP(MD)No.
21673 of 2023]

... Petitioner

Vs

- 1.The Commissioner,
The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.
- 2.The Joint Commissioner,
The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Tirunelveli
- 3.The Assistant Commissioner,
the Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Tirunelveli.
- 4.Arulmighu Thirukkuttralanathasamy Thirukovil,
represented by its Executive Officer,
Courtallam Tenkasi Taluk,Tirunelveli District.



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5.Vidhya Lakshmi

6.Venkatachalam

[R5 and R6 are impleaded vide
order dated 09.11.2023 in
WMP(MD)No.21673 of 2023]

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records from the file of the 1st respondent with respect to the impugned order in RP.No.91 of 2013/ D2, dated 03.10.2013 and quash the same and further direct the respondents to regularise the petitioner's tenancy by receiving the applicable rents from him.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mr.P.Subburaj

Nos.1 to 3 Special Govt.Pleader

For Respondent : Mr.S.Manohar

No.4

SA(MD)No.464 of 2011

1.S.Padmanaban (died)

2.P.Subramanian

3.P.Ramah

Vs

1.Arulmigu Thiru Courtallanathaswamy Thirukoil,
Through its Executive Officer,
Courtallam,
having office at Courtalla,
Tenkasi Taluk, Tirunelveli District.



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2.Vidhya Lakshmi

3.Venkatachalam

... Respondents

[A-3 and R-2 and 3 are brought on record as LR's of the deceased A-1 vide order dated 09.11.2023 in CMP(MD)No.14516 of 2023]

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 09.02.2011 passed in A.S.No.37 of 2010 on the file of the Principal Sub Court, Tenkasi reversing the judgment and Decree dated 27.04.2010 passed in OS.No.66 of 2008 on the file of the Additional District Munsif Court, Tenkasi.

For Appellants : Mr.D.Nallathambi

For Respondent : Mr.S.Monohar
No.1

ORDER

Since both these writ petition and the second appeal are arising out one and the same subject property, both these writ petition and the second Appeal were tagged by administrative order dated 29.09.2016. Accordingly they are taken up for hearing and are disposed of by this common order.

2.For the sake of clarity and convenience, the writ petitioners and the appellants are referred



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to as the petitioners and the 4th respondent in the writ petition and the 1st respondent in the second appeal is referred to as the respondent Temple.

3. Pending these cases, the 1st petitioner died and his legal heir one P. Ramah is brought on record as 3rd petitioner in writ petition and as 3rd appellant in the second appeal. The other legal heirs one Vidhya Lakshmi and Venkatachalam are brought on record as respondents 5 and 6 in the writ petition and respondents 2 and 3 in the second appeals.

4. The 2nd and 3rd petitioners are the legal heirs of the 1st petitioner S. Padmanaban and they claim to be the descendants of one Subramniya Iyer, who is said to be the tenant of building at Door Nos. 71 and 28 of Sannathi Street, Coutrallam, Tenkasi District. The above properties belong to Arulmigu Thirukutralanatha Swamy Thirukovil. The 1st petitioner had carried out certain repair works in the year 2007 that the roof was damaged and water was leaking in



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the building. While so the respondent temple represented by its Executive Officer has filed the suit before the District Munsif Court, Tenkasi in OS.No.66 of 2008 seeking permanent injunction restraining the 1st petitioner Padmanabhan from repairing, changing or developing the scheduled mentioned property. The suit was dismissed by the trial Court by its judgment and decree dated 27.04.2010. As against the same the respondent temple filed an appeal before the Sub Court, Tenkasi District in AS.No.37 of 2010, which was allowed by judgment and decree dated 09.11.2011. Challenging the same, the 1st petitioner Padmanabhan along with his son 2nd petitioner Subramanian has filed the present second appeal and this appeal was admitted by this Court on 14.07.2011.

5. Pending the original suit, the respondent temple initiated action under Section 78 of the Hindu Religious and Charitable Endowments Act [herein after shall be referred to as 'the Act'] that the petitioners are in illegal occupation of the subject



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property without any lease. In the year 2010 the respondent temple initiated proceedings before the Joint Commissioner of Hindu Religious and Charitable Endowments Department in MP.No.6 of 2010 and the same was allowed by the Joint Commissioner, Tirunelveli by his order dated 06.05.2013. As against that order the 1st petitioner Padmanabhan and his son Subramanian filed a revision petition before the Commissioner, HR and CE Department in RP.No.91 of 2013 D2, which was dismissed by order dated 03.10.2013. Challenging the same the present writ petition is filed.

6.The brief facts leading to filing of these cases are that the 1st petitioner's father one Subramania Iyer was a tenant of the respondent temple for the property bearing Nos.28 and 71 of the Sannathi Street, Courtallam, Tenkasi from the year 1950 and he died on 07.07.1994. Thereafter, his son / 1st petitioner Padmanabhan was paying the rent regularly to the temple without any default. The death of Subramania Iyer was duly intimated to the respondent temple and a request was made by the



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1st petitioner Padmanabhan to transfer the tenancy in his favour, but it was not transferred by the respondent temple. However the respondent temple has accepted the rent paid by the 1st petitioner. While things stood so, the 1st petitioner requested the respondent temple to repair the damaged roof, which led to water leakage. The request was not considered by the respondent temple. Therefore the 1st petitioner on his own, repaired the building by spending a sum of Rs.10,000/-. This was objected to by the Executive officer of the temple and subsequently a criminal case was registered in Crime No.496 of 2007 on the file of the Courtrallam Police Station as against the temple. The temple filed a suit as against the 1st petitioner for permanent injunction restraining him from repairing or altering the subject property in OS.No.66 of 2008 and the same was dismissed by its judgment and decree dated 27.04.2010. The appeal suit filed by the respondent temple in AS.No.37 of 2010 before the Sub Court, Tenkasi was decreed in favour of the temple by judgment and decree dated 09.02.2011,



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against which, the present second appeal is filed.

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7. Pending the suit in OS.No.66 of 2008, the respondent temple initiated action under Section 78 of the Act in MP.No.6 of 2010 A3 before the 2nd respondent Joint Commissioner, Tirunelveli, wherein an order for eviction was passed, which was confirmed by the Commissioner in the revision petition in RP.No.91 of 2013 by order dated 03.10.2013. The case of the respondent temple is that there is no document available with the petitioners that the suit property was ever leased out to the 1st petitioner's father Subramania Iyer or to the 1st petitioner Padmanabhan.

8. Admittedly the suit property belongs to the 4th respondent temple. In the absence of any valid lease deed, the petitioners are not entitled to possess the subject property. The petitioners have made alterations in the building without any permission from the respondent temple and also lodged a criminal complaint as against the temple.



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When it was questioned by the respondent temple a criminal complaint was lodged as against the temple authorities. The petitioners claim that 1st petitioner has sought for permission to transfer the lease and also for alteration of the building, however, no approval was granted. The petitioners are using door No.28 as dress shop and door No.71 has been sub-leased for a photo studio and for eateries. The petitioners are misusing the temple property and for their enrichment. The suit in OS.No.66 of 2008 was filed in the year 2008 for permanent injunction restraining the 1st and 2nd petitioners from effecting repairs and for improvement. It was ordered in favour of the temple in AS.No.37 of 2010 and the pendency of the second appeal on that issue does not give any right to occupy the temple property without any authority and even after the orders passed by the Commissioner in RP.No.91 of 2013 confirming the order of eviction passed by the Joint Commissioner.



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9.The learned Counsel for the petitioners submits that the 1st petitioner's father P.Subramania Iyer was the tenant of the respondent temple property viz., property in D.Nos.28 and 71 and he died in the year 1994. This was intimated to the respondent temple and ever since the petitioners are in occupation of the subject properties. The 1st petitioner being son of the Subramania Iyer had requested the temple to transfer the tenancy in his name and he had been paying the rent in the name of his father Subramania Iyer. While so in the year 2007 the roof the building got damaged and the 1st petitioner on his own cost repaired the damages, it was objected to by the respondent temple. In the proceedings initiated by the respondent temple under Section 78 of the Act, they have admitted the tenancy of Subramina Iyer and the petitioners are his legal heirs and they have also admitted that the 1st petitioner had paid the rent upto September 2007. The request of the 1st petitioner to transfer the tenancy in his name has not been considered by the respondent temple.

10/31



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10.The learned Counsel further submits that though the original tenant died in the year 1994, the proceedings under Section 78 of the Act was initiated only in year 2008 while the suit was pending. The suit filed by the respondent temple was dismissed after elaborate discussion and it is now pending before this Court at the second appeal stage. Moreover the Executive Officer of the temple cannot maintain the suit without the permission of the Commissioner. All these proceedings are initiated only to wreak vengeance against the petitioners for having lodged the complaint against the temple. Even now the petitioners are ready to pay the fair rent. Therefore, the learned Counsel for the petitioners prays for allowing of cases.

11.He also relied on the judgment of this Court in AS(MD)No.187 and 188 of 2018 dated 27.04.2022 and submits that the the Executive Officer is not competent to file the suit on behalf of the temple.



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12.The learned Counsel for the respondent temple submits that in the Miscellaneous Demand Register only the name of Subramanian Iyer finds place in respect of the shops in dispute. It has not been transferred in the name of the petitioners. Therefore the petitioners have no legal right to be in occupation of the property. The petitioners are in occupation of the property only on the basis of use and occupation and not as a tenant. Further as per the provisions of the Transfer of the Property Act, only with the permission of the landlord, the tenant can alter the property and the petitioners never sought such permission and attempted to alter the property. In this regard a private complaint lodged by the staff of the temple is pending.

13.The suit for permanent injunction was filed by the respondent temple since the petitioners have illegally altered the property and the proceedings under Section 78 of the Act was initiated since the petitioners have violated the provisions of the Transfer of the Property Act. Though the petitioners



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were paying rent, it was received without any prejudice to the temple. Only after considering all these aspects, the 2nd respondent Joint Commissioner passed an order of eviction and it was also confirmed by the Commissioner. Further the appellate Court has also by taking into consideration all these aspects allowed the appeal and it is now pending before this Court.

14.The learned Counsel further submits that the properties were leased out only for residential purposes, but the petitioners have sub-leased the same for commercial purposes such as dress shop, photo studio and for eatery. The request of the 1st petitioner to transfer the tenancy was made only after the orders of the 1st respondent / the Commissioner, HR and CE Department dated 03.10.2013 and it was rejected by the 4th respondent.

15.He further submits that this Court has held that the Executive Officer of the temple can maintain the suit to protect the interest of the deity. He



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also relied on the judgment of this Court in SA(MD)No.75 of 2005 dated 15.02.2023. As on date the arrears of the rent is Rs.40 Lakh. The petitioners are not having any right to occupy the property and to protect the interest of the temple, these cases have to be dismissed.

16.This Court considered the rival submissions and perused the materials placed on record.

17.The respondent temple initiated action as against the present petitioners' father that he was in unauthorised occupation of the temple property at Door Nos.28 and 71 in Sannathi Street, Courtallam before the Joint Commissioner under Section 78 of the Act and it was allowed in favour of the respondent temple that the petitioners' grand father was a lessee and he is not having any documents to substantiate that he was permitted as a lessee of the temple building at Door Nos.28 and 71. The 1st petitioner has failed to produce any document before the Joint Commissioner during the enquiry and



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therefore, he was treated as an encroacher and order of eviction was passed on 06.05.2013 and it was confirmed in the revision petition by the Commissioner, by order dated 03.10.2013. As against the same, the 1st and 2nd petitioners have filed this writ petition. The main contention of the 1st and 2nd petitioners in the revision petition is that the second appeal is pending with regard to the subject property before this Court and the proceedings under Section 78 of the Act was initiated to wreak vengeance as against them for having lodged the criminal complaint as against the respondent temple in Crime No.496 of 2007 in Courtallam Police Station. The 1st petitioner's father Subramania Iyer was the original lessee from the year 1950 and even after the demise of Subramania Iyer in the year 1994, the 2nd petitioner was permitted to continue the lease till 2008. The suit was filed in the year 2008 and the proceedings was initiated under Section 78 of the Act in the year 2010. Admittedly the petitioners are not having any document substantiate that their grand father Subramania Iyer was a lessee of the respondent



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temple. The lease deed of the year 1950 was not placed before the trial Court as well as before this Court.

18.The said Subramania Iyer died in the year 1994. Even thereafter rent was paid till 2008 in the name of Subramania Iyer. The 1st petitioner has not taken any steps to transfer the lease in the year 1994. Section 78 of the Act enables the respondent temple to initiate action for eviction for unauthorised occupation of the temple property. Section 78 of the Act reads as under:

"78.Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.-(1) Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space



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wherever situation belonging to the religious institution or endowment (hereinafter referred to as "the property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated. *Explanation.*—For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include- (a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and (b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where, on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a *prima facie* case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and



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calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such



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amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed."

19. In the absence of any document placed on behalf of the petitioners, the said eviction order under Section 78 of the Act has been confirmed by the Commissioner in the review petition. There is no reason to interfere with the orders of the Commissioner. In the absence of any document to show, this Court is not inclined to accept that the petitioners are the tenants of the respondent temple. Accordingly this writ petition is liable to be dismissed.

20. Insofar the second appeal is concerned, it has been filed challenging the judgment passed in favour of the respondent temple and it has been admitted on the following substantial questions of law.



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"a) As per Section 28 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Board of Trustees of the Religious Institution alone has the power to file the suit on behalf of the institution and Section 6(2) read with Section 45 of the Act, 1959, makes very clear that the Executive Officer is not the authority competent to initiate the legal proceedings. While so, whether the findings of the lower appellate Court that the Executive Officer has the locus standi to file this suit is correct under law?

b. Since there is a diverse finding recorded by the trial Court and the lower appellate Court, whether interference by this Hon'ble Court become necessary as held in Judgment reported in 1996(2) SCC page 624?



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c)Whether the findings of the appellate Court that the defendants caused damage to the suit property without the permission of the suit property without the permission of the lessor warrants interference under Section 100 of the Civil Procedure Code, when the Act of the present appellant/ defendants changing the tiled roof of the building into a concrete roof is only an improvement and an added asset to the suit schedule property and the same is not prohibited under Section 108(P) of the Transfer of Property Act nor it expect the consent of the lessor?

d)Whether the suit instituted in the name of the temple namely "Arulmigu Thiru COUrtallanathaswamy Thirukovil" is maintainable, since it is not a juristic person? And



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e) Whether the finding of the appellate Court that the plaintiff is the deity of the temple, that the deity of any temple is the legal entity by itself, that it can sue and be sued in its own name, that its executive officer is only representing the deity and hence the suit has been properly laid are all against the short cause title, long cause title of the plaint and so the first appellate court has not properly scrutinised the materials, result in perverse finding on this aspect and hence warrants interference?."

21.The issue in the suit is that the petitioners without any authority have attempted to alter the superstructure of the building belonging to the temple. Though the petitioners claim that the 1st petitioner has sought for permission for the same, no permission was granted by the respondent temple. However considering the condition of the building, they have made alteration works.



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22.As discussed above, the 1st petitioner Padmanabhan had never approached the respondent for transfer of lease. Even according to the petitioners, the lease was given to the petitioners' grand father Subramania Iyer and he died in the year 1994. Even thereafter the rent was paid by the 1st petitioner Padmanabhan in the name of Subramania Iyer. The temple administration has noted this mistake only when the 1st petitioner Padmanabhan has attempted to alienate the structure of the temple property. He is not entitled to alter the superstructure of the property of the landlord without valid permission of the landlord. The said Padmanabhan has managed to make some alteration in the property by lodging a complaint as against the then Executive Officer.

23.The petitioners have taken a legal plea that the suit cannot be maintained by the Executive Officer of the temple. This Court in second appeal SA(MD)No.75 of 2005 by its judgment dated 15.02.2023 has held as under:



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"12.7. The Hon'ble Apex Court in *Bishwanath and another Vs. Sri Thakur Radha Ballabhji and others* reported in AIR 1967 SC 1044, held that the legal status of an Idol is that of a minor and when the person representing it leaves it in a lurch, a worshipper of the Idol, in his ad hoc capacity, can maintain a suit for possession. The relevant observation of the Hon-ble Apex Court is as follows:

"10. An idol is in the position of a minor when the person representing it leaves it in a lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be



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held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment.?

12.9. Further, Section 45 of the HR & CE Act which deals with appointment and duties of Executive Officers reads as follows:

"45.Appointment and duties of Executive Officers.

(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an Executive Officer for any religious institution other than a math or a specific endowment attached to a math.



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[Explanation. In this section math shall not include a temple under the control of a math].

(2) The Executive Officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in sub-section (1) shall be assigned to the Executed Officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged, respectively, by the Executive Officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the Executive Officer.

12.10. A perusal of the above said provision makes it clear that at the time of appointment of Executive Officer, the Commissioner would define the powers and



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duties which may be exercised and discharged by the Executive Officer and the Trustee. Whether power to sue or be sued was conferred on the Executive Officer or not depends on the terms and conditions of appointment of the Executive Officer. In fact, as per Rule 4(b)(iii) of Conditions for Appointment of Executive Officers Rules, 2015, framed under HR & CE Act, an Executive Officer is entitled to sue or be sued in the name of the religious institution in all legal proceedings with the approval of the competent authority. The relevant rule reads as follows:

"Rule 4(b)(iii) sue or be sued in the name of the religious institution in all legal proceedings with the approval of the competent authority."

24.As held by the Hon'ble Supreme Court and by this Court, in the above cited judgments, the devotee can maintain the suit in the interest of the temple, and the Executive Officer, who is in charge of the temple is also entitled to maintain the suit. The Idol is a minor and it is the everybody's



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responsibility to protect the interest of the temple.

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25.The 1st petitioner has taken a plea that they are ready to pay the fair rent fixed by the temple. The respondent temple claims that the petitioner has not paid the rent from the year 2008 and they are in occupation of the temple property for the past sixteen years. In view of the pendency of the writ petition and the second appeal, they are also using the premises as commercial property as dress shop, photo shop and eateries and they have enriched themselves. According to the respondent temple, arrears as on date is Rs.40,00,000/- Rupees Forty Lakh. This Court in the earlier occasion suggested the parties to permit the petitioners as a tenant provided, if they agree for a fair rent and to pay the fair rent within a period of stipulated time. The petitioner has not agreed for the proposal.

26.The suit was filed for restraining the 1st and 2nd petitioners from altering the superstructures. The alteration according to the petitioners is certain



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repair works in order to prevent the leakage of water from the roof. That was also completed and therefore nothing survives for further adjudication in the second appeal and hence the second appeal has become infructuous, in view of the order passed in this writ petition.

27.In the result the writ petition and the second appeal are dismissed. No costs. Consequently connected miscellaneous petitions are also dismissed.

26.02.2024

Internet : Yes / No

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To

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- 1.The Commissioner,
The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 34.
- 2.The Joint Commissioner,
The Tamil Nadu Hindu Religious and
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Tirunelveli.
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- 4.The Executive Officer,
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