

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

FRIDAY, THE 14TH DAY OF JANUARY 2022 / 24TH POUSHA, 1943

OP(C) NO. 2535 OF 2021

AGAINST THE ORDER IN IA 5/2021 IN AS 11/2021 OF ADDITIONAL

DISTRICT COURT - VII, ERNAKULAM

PETITIONER/PETITIONER IN I.A.:

BIG MOVERS

2/439-B, CONTAINER TERMINAL ROAD, NEAR
CHERANALLOOR SIGNAL JUNCTION, ERNAKULAM - 682034,
REPRESENTED BY ITS MANAGING PARTNER MRS. ROSILY
XAVIER.

BY ADVS.

C.R.SYAMKUMAR

SOORAJ T.ELENJICKAL

P.A.MOHAMMED SHAH

ASWIN KUMAR M J

RENOY VINCENT

HELEN P.A.

ARUN ROY

SHAHIR SHOWKATH ALI

RESPONDENTS/RESPONDENTS IN I.A/APPELLANTS & RESPONDENTS:

- 1 REENI GEORGE
AGED 48 YEARS
W/O. C. G. ANTONY, PROPRIETRESS, M/S PRIME
SHIPPING & LOGISTICS, I FLOOR, PUC NO.6, NEAR
LAKSHADWEEP OFFICE, I. G. ROAD, WILLINGDON
ISLAND, KOCHI - 682003.
- 2 PRIME SHIPPING & LOGISTICS
I FLOOR, PUC NO.6, NEAR LAKSHADWEEP OFFICE, I. G.
ROAD, WILLINGDON ISLAND, KOCHI - 682003.
- 3 COCHIN PORT TRUST
PORT TRUST BUILDING, WILLINGDON ISLAND, KOCHI -
682003, REPRESENTED BY ITS CHAIRMAN.

4 SECRETARY
COCHIN PORT TRUST, PORT TRUST BUILDING,
WILLINGDON ISLAND, KOCHI - 682003.

BY ADVS.
FOR R1 & R2 SRI S.K.PREMRAJ
C.ANILKUMAR (KALLESSERIL)
V.SARITHA
K.V.SUDHEER
P.M.MANASH
REENU KURIAN
NEEMA NOOR MOHAMED
JAIN VARGHESE
NAVAS JAN A.
FOR R3 & R4 SRI M.GOPIKRISHNAN NAMBIAR
K.JOHN MATHAI
JOSON MANAVALAN
KURRYAN THOMAS
PAULOSE C. ABRAHAM
RAJA KANNAN

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
04.01.2022, THE COURT ON 14.01.2022 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C).No.2535 of 2021

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Dated this the 14th day of January, 2022

J U D G M E N T

Ext.P6, the order in I.A.No.5/2021 in A.S.No.11/2021 on the file of the Additional District Judge-VII, Ernakulam is the order under challenge in this petition filed under Article 227 of the Constitution of India.

2. Heard both sides.

3. I.A.No.5/2021 is an application filed by the petitioner herein to get impleaded as additional 3rd respondent in the above appeal. Ext.P4 is the copy of the said application. In the affidavit in support of the application, it has been stated that the petitioner, *M/s Big Movers had, in pursuance to the Notice inviting bids published by the Cochin Port Trust, submitted their tender for the open space now being illegally occupied by the appellants (Unit-*

14 having 14260 Sq. Mts), after paying the Earnest Money Deposit of Rs.8,16,454/-. The amount quoted by my Firm was Rs.65,10,000/- as against the base price of Rs.21,50,650/- and it was intimated the amount quoted by M/s Big Movers was the highest. It is understood that having satisfied all the requirements, the tender would be awarded to M/s.Big Movers, but in view of the pendency of this appeal as also the interim order passed therein, the award of the tender is being adjourned. The Cochin Port Trust, on finding that the amount quoted by my Firm would not be valid after 11.04.2021 in view of the specific terms in the Tender notification, had intimated my Firm to keep open the validity of the said Tender initially till 31-07-2021 and thereafter till 31-10-2021, by separate communications issued to us as bearing No.EM/T/232/License/2020 dated 12.04.2021 and EM/T/232/License/2020 dated 09.08.2021 respectively, on the specific reason that the same could not be awarded due to the pendency of this litigation. In consonance with the requests made by the Cochin Port Trust, M/s Big Movers has expressed its consent to keep the validity of the quotation made by them till 31-

10-2021 and thus despite being the highest bidder, the tender has not been awarded to my Firm. It may also be noted that the Earnest Money deposited with Cochin Port Trust is being retained by them in view of the extension of the validity of the Tender and thus M/s.Big Movers are suffering huge financial losses on account of the pendency of this appeal. On the above specific assertion, impleadment was sought for.

4. Respondents 1 and 2 in the appeal filed counter highlighting that the petitioner herein is neither a necessary nor a proper party and the adjudication of the appeal would in no way affect the interest of the petitioner. Relevant decisions on this point also were highlighted in the counter to defeat the claim of the petitioner in getting impleaded as an additional party. The specific contention of the respondents 1 and 2 is that by no stretch of imagination the petitioner is either a necessary party or a proper party in this appeal.

5. In this context, the pertinent questions to be answered are; (i) who is a necessary party in a Suit or appeal or other proceedings:

(ii) can a party awaiting possession of a premises or a building having given highest tender, after vacation of the said premises or building by a party being licensee, is either a proper party or a necessary party in a litigation pending between the licensee and the licensor?

6. While drawing the distinction between a **necessary party** and a **proper party**, a four Judges' Bench of the Apex Court in [AIR 1963 SC 786] *Udit Narain Singh Malpaharia v. Additional Member Board of Revenue, Bihar & anr.* held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

7. In a three Judges' Bench decision reported in [AIR 1958 SC 886] *Razia Begum v. Sahebzadi Anwar Begum & Ors.* wherein taking note of the decision of Lindley LJ in [1892 (1) Ch.487] *Moser v. Marsden*, it was held that a party who is not directly interested in the issues between the plaintiff and the

defendant, but is only indirectly or commercially affected, cannot be added as a defendant because the Court has no jurisdiction to bring him on the record even as a proper party. It was held to have been firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it raises questions relating to movable or immovable property. That is not the case here as facts *ipso facto* would establish.

8. In the decision reported in [(1993) 1 SCC 608], ***Union of India v. Sher Singh*** it was held by the Apex Court that the definition of a person interested being of inclusive one, the same must be liberally construed so as to implead person who may be directly or indirectly interested either to the title or to the quantum of compensation when dealing with land acquisition reference.

9. Thus going by the settled law, it is not in dispute that **a necessary party in a proceedings is one, without whom no order can be made effectively. Similarly, a proper party is**

one in whose absence, an effective order can be made, but whose presence is necessary for a complete and final decision on the question involved in the proceedings.

10. While addressing the claim posed by the petitioner to get impleaded in the proceedings, the learned District Judge found that the petitioner is not at all a necessary party as the petitioner had not even a remote or indirect nexus with the lis involved in this case. It was found that the petitioner is not a proper party, as the petitioner's presence is not at all required for the final decision of the appeal.

11. The learned counsel for the petitioner submitted that M/s.Big Movers (the petitioner herein), in fact, submitted tender for the open space now being illegally occupied by the appellants originally owned by M/s.Cochin Port Trust and quoted Rs.65,10,000/-. The pendency of this appeal alone is the reason for not getting the premises at the hands of the petitioner. Therefore, an immediate disposal of the appeal at the interdiction of the petitioner is sought for by impleading M/s.Big Movers as a party. It is highlighted finding that earnest money to the tune of

Rs.8,16,640- also was deposited by the petitioner in view of extension of the period of validity to get the premises in occupation.

12. Per contra, it is submitted by the learned counsel for respondents 1 and 2 that the petitioner is not a necessary or a proper party. The petitioner herein, in fact, is waiting for occupying the premises, which, according to the Port Trust, is under illegal occupation of respondents 1 and 2 even without paying the licence fee. But, respondents 1 and 2 asserted the licence as irrevocable and the said question required to be decided in the appeal pending before the District Court. The learned counsel conceded that, if the respondents are dispossessed, the premises may go in occupation of the petitioner herein.

13. Here the status of the petitioner, who sought impleadment as an additional respondent in the appeal, is a party waiting to occupy the premises presently in occupation of respondents 1 and 2 upon a licence. The petitioner herein had quoted highest tender and the only impediment in getting

occupation is vacation of the premises by respondents 1 and 2. **However, a mere chance for occupation of the premises by way of licence by one party is not a sufficient reason to hold that such a party is either a necessary party or a proper party in an appeal pending between the licensor and the licensee.** The rationale is; the presence of the petitioner is not at all required for an effective disposal of the appeal. To put it otherwise, the petitioner is not at all a necessary or proper party in the instant appeal, since an effective order can be made in its absence. In view of the matter, dismissal of I.A.No.5/2021 as per Ext.P6 order by the learned Additional District Judge-VII, Ernakulam cannot be faulted since the same is neither arbitrary nor perverse.

14. On scrutiny of the materials, it appears that respondents 1 and 2 have been occupying the premises on the basis of a licence. It is submitted by the learned counsel for the Cochin Port Trust that huge amount is in arrears by way of licence fee and respondents 1 and 2 have been occupying the building without paying the licence fee. Therefore, an early

disposal of the appeal pending before the learned Additional District Judge-VII, Ernakulam is essential to resolve the grievance of the Port Trust. In this context, the learned counsel for the Port Trust prayed for a direction to the learned Additional District Judge-VII, Ernakulam, to have an early disposal of the appeal.

15. In view of the matter, while confirming Ext.P6 order, the learned Additional District Judge-VII, Ernakulam is directed to expedite the hearing and disposal of A.S.No.11/2021 at the earliest, at any rate, before close for summer vacation.

Registry shall forward a copy of this judgment to the learned Additional District Judge-VII, Ernakulam for information and compliance, within 7 days.

The Original Petition is disposed of accordingly.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtr/

APPENDIX OF OP(C) 2535/2021**PETITIONER'S EXHIBITS**

Exhibit P1	TRUE COPY OF THE ORDER NO.EM1/LICENSE/PS/15000SQM/2018 DATED 16.02.2021.
Exhibit P2	TRUE COPY OF A.S.11/2021 FILED BY THE 1ST & 2ND RESPONDENT DATED 24.02.2021.
Exhibit P3	TRUE COPY OF THE LETTER NO.EM/T/232/LICENSE/2020 DATED 09.08.2021.
Exhibit P4	TRUE COPY OF I.A.5/2021 IN A.S.11/2021 DATED 20.10.2021.
Exhibit P5	TRUE COPY OF THE OBJECTIONS IN IA 5/2021 IN A.S.11/2021 FILED BY THE 1ST & 2ND RESPONDENTS DATED 11.11.2021.
Exhibit P6	TRUE COPY OF THE ORDER IN IA 5/2021 IN A.S.11/2021 OF THE VII TH ADDITIONAL DISTRICT COURT, ERNAKULA DATED 16.12.2021.

RESPONDENTS' EXHIBITS

EXT.R41(a) : TRUE COPY OF THE ORDER DATED 01.03.2021 IN
I.A.NO.1/2021 IN A.S.NO.11/2021 ON THE FILES OF THE
HON'BLE DISTRICT COURT, ERNAKULAM.