

(2012) 07 KL CK 0005
In the High Court Of Kerala
Case No : OP (RC) No. 2665 of 2011 (O)

Ann Mary Shinu C. Tom

APPELLANT

Vs

Chesty Varkey and Priya Chesty Varkey

RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:

Constitution of India, 1950 — Article 227
Land Acquisition Act, 1894 — Section 11, 11(12), 12

Citation : (2012) 07 KL CK 0005

Hon'ble Judges : Pius C. Kuriakose, J;A.V. Ramakrishna Pillai, J

Bench : Division Bench

Advocate : V. Philip Mathew, Sri. Jeph Joseph and Sri. Joseph Rony Jose, for the Appellant; R. Surendran, for the Respondent

Judgement

Pius C. Kuriakose, J.—Under challenge in this Original Petition filed by the landlord (legal heirs of the original landlord) under Article 227 of the Constitution is Ext.P6 order passed by the Rent Control Court, Thiruvalla. By Ext.P6 the Rent Control Court dismissed the application (Ext.P4) filed by the petitioner who was impleaded as fifth respondent in Ext.P1 application filed by the respondents/tenants under sub Section 12 of Section 11. Ext.P4 was filed by the petitioner herein seeking amendment of the objections which was filed by her mother, Smt. Suma C. Chettimattom who had filed the Rent Control Petition along with her husband as the second petitioner. In fact, the present petitioner along with her siblings were arrayed as respondents in Ext.P1 I.A. To the I.A. the mother as well as the petitioner herein filed separate objections. Going by the objections filed by the mother she had agreed that till November, 2007 i.e. long after the delivery of the building was taken in execution of the eviction order she has not started any business. I.A. 910/11 (Ext.P4) seeks amendment of the objections filed by the mother and not by the petitioner. The learned Rent Control Court dismissed the I.A. by Ext.P6 order observing that the IA filed long after trial had started in the application under sub Section 12 of Section 11 was filed without any bona fides with the objective of protracting the proceedings under sub Section 12 of Section

11. In this Original Petition under Article 227 Ext.P6 is challenged on various grounds. Even before he would commence his submissions, Sri.V.Philip Mathew submitted that there is a likelihood of the issue between the parties being settled as the first respondent who is seeking restoration of possession under sub Section 12 of Section 11 has already secured an employment in a Neethi Medical Store and will never be able to re-occupy the buildings which is subject matter of eviction order even if the petition u/s 11(12) is allowed.

2. Sri. R. Surendran, the learned counsel for the respondents submitted that there will not be any difficulty for the respondents to occupy the building if the restoration application is allowed by the Rent Control Court. The only question that we are called upon to consider is whether Ext.P6 order is vitiated to the extent of warranting correction under the supervisory jurisdiction of this Court under Article 227. According to us the above question can be answered only in the negative. First of all the amendment that the petitioner sought for is not amendment of the objections that she herself has filed. The amendment sought for was amendment of the objections her mother had filed. The proposed amendment if allowed will enable the petitioner to introduce a contention which was not raised by the mother/ the second respondent in Ext.P2 application. In fact such an amendment will enable the petitioner to displace herself completely from the admissions her mother had made in the objections filed by her to the effect that till November 2007 she did not occupy the building. This amendment in our view will cause prejudice to the respondents. At any rate it is very clear to our mind that Ext.P6 is not vitiated to the extent of being corrected under the visitatorial jurisdiction of this Court which will be invoked very sparingly. Coming to the submission of Sri.Philip Mathews that on account of the subsequent event of the first respondent securing an employment in Neethi Medical Store she will never be able to occupy the building in question even if Ext.P2 is allowed in her favour, we direct the learned Rent Control Court to explore the possibilities of a settlement between the parties after the trial is completed and arguments are over but before orders are passed on Ext.P1. Needless to mention that the learned Rent Control Court should expedite matters and should complete the trial and hearing of Ext.P1 application at any rate within one month of receiving copy of this judgment.