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**(1992) 07 KL CK 0043**

**In the High Court Of Kerala**

**Case No :** O.P. No's. 9044/91 and 7271 and 7866 of 1992

K.C. Sankaranarayanan and Others

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

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**Date of Decision :** 31-07-1992

**Acts Referred:**

Kerala Private Forests (Exemption from Vesting) Rules, 1972 — Rule 3

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 3(2), 3(3)

**Citation :** AIR 1992 Ker 402

**Hon'ble Judges :** P.K. Shamsuddin, J

**Bench :** Single Bench

**Advocate :** K. Prabhakaran, for the Appellant; Hemalatha, Govt. Pleader, for the Respondent

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## **Judgement**

P.K. Shamsuddin, J.—A common question of law arises in all these Original Petitions and therefore they were heard together and disposed of by a common judgment. For convenience sake, I shall refer to the documents as they are marked in O.P. No. 9044 of 1991.

2. Petitioners 1 to 4 in O.P. No. 9044/91 are the legal representatives of late Smt. Puthiyaveettil Meera Bai. 1st petitioner is the husband, petitioners 2 to 4 are the daughters and 5th petitioner is the younger sister of late Meera Bai.

3. Under a final decree, in a partition suit, O.S. No. 553 of 1939 on the file of Munsiff's Court, Kuthuparamba, the plot "C"comphsed in R.Section 6/1 of Kavilampara Desom in Badagara Taluk was allotted to the thavazhi of late Mathu alias Kunchi Amma. The above plot was private forest. As per the final decree, the private forest was divided into by metes and bounds among the co-sharers to be enjoyed by them either singly or in groups. According to the petitioners, Meera Bai and four others are the only surviving members of the thavazhi of Puthenveettil Mathu alias Kunchi Amma and that as per the above final decree, share No. 20 consisting of 79.19 acres of private forest lands was allotted absolutely to the share of Kunchi Amma's thavazhi. Meera Bai and others in the

group were governed by Marumakkathayam Law. Marumakkathayam system of inheritance was abolished by Joint Family Abolition Act, 1976, which came into force on 1-12-1976. Meera Bai and 4 others became the co-owners of the property allotted to the thavazhi of late Kunchi Amma and according to petitioners, petitioners 1 to 4 are entitled to the share of Meera Bai as her legal heirs. 5th petitioner is entitled to her share in the thavazhi property as second grand-daughter of late Kunchi Amma. According to them, subject to the provisions of Kerala Land Reforms Act, all of them are entitled to own and hold land, and the lands inherited by them have not vested in the Government under the provisions of Kerala Private Forest (Vesting and Assignment) (hereinafter referred to as "the Act")-

4. In January, 1982, late Meera Bai filed an application under the Private Forests (Tribunal) Rules, 1972 before the Forest Tribunal, Calicut in Form No. A along with an application to condone the delay, claiming exemption of a portion of her private forest, but the Forest Tribunal dismissed the application on the ground that the Tribunal has no power to condone the delay. Meera Bai filed M.F. A. No. 524/ 83 before this Court, but this Court advised her to withdraw the appeal and to approach the Custodian of Vested Forests under Rule 3(1) of Private Forests (Exemption from Vesting) Rules, 1972 to get her statutory rights u/s 3(3) of the Act established. In the above circumstances, the appeal was withdrawn. Ext. P-1 is the said judgment.

5. Thereafter, Meera Bai filed an application for exemption under Rule 3(1) of the Private Forests (Exemption from Vesting) Rules, 1972 (hereinafter referred to as "the Exemption Rules"). While considering the above application, the legal issues involved in the matter were referred to the Government by the Custodian and Conservator of Vested Forests, the 2nd respondent. 1st respondent by its order No. 9373/ B-2/ B-9/ FWLD dated 13-7-1989 clarified that Rule 3(b) of the Rules cannot be considered legally authorised by the Statute. Ext. P-2 is the said clarification. Since no order was passed on her applications, she moved this Court in O.P. 2907/91-U, which was disposed of by this Court vide Ext. P-3 judgment, directing 2nd respondent to dispose of the application within two months. Thereafter, 1st respondent rejected the application by Ext. P-4 order holding that the application is time barred. In this Original Petition, the petitioners who are legal representatives of Meera Bai challenge Ext. P-4 order.

6. Petitioners 1 and 2 in O.P. No. 7271 / 92 are the legal heirs of Puthenveetil Gopalan Nair, who was 59th respondent in the final decree proceedings in O.S. No. 553/1939 and petitioners 3 and 4 are legal heirs of late Dr. P. A. Nair, who was 60th respondent in the above O.S. Here also, petitioners 1 and 2 filed O.P. No. 6/82 before the Forest Tribunal under Sec. 8 of the Act claiming exemption from vesting and petitioners 3 and 4 filed O. A. No. 9/82. They filed M.F.A. 509 and 524 of 1983 against the order dismissing their applications for condonation of delay. They were also advised that the proper remedy was to file an application before the Custodian of Vested Forests under Rule 3(1) of the Rules.

Thereafter, petitioners herein filed applications and the Custodian referred the legal issues involved to the Government and the Government by Ext. P-2 letter clarified that Rule 3(b) cannot be considered as legally authorised by Statute. Finally, the Custodian rejected the applications holding that they are time barred. Exts. P-5 and P-6 are the orders and they are challenged in the Original Petition.

7. Petitioners in O.P. No. 7866 of 1992 are the legal heirs of Puthenveetil Appa Nair, the 66th respondent in O.S. No. 553/39. As per the final decree, 115.31 acres of private forest in R.Section 6/1 shown in the plan attached to the final decree were allotted to the share of Puthenveetil Gopalan Nair and others jointly who together constituted a group, According to petitioners herein, out of the above said extent, petitioners are entitled to 1 share consisting of 13.75 acres of private forest and they are entitled to own and hold lands subject to the ceiling provisions of Kerala Land Reforms Act. Petitioners filed O.A. No. 8/82 u/s 8 of the Act claiming exemption from vesting along with application to condone the delay and the said application was dismissed by the Forest Tribunal. Petitioners filed M.F.A. No. 509/ 83 before this Court and the said appeal was withdrawn to approach the appropriate forum. Thereafter, petitioners filed application before the Custodian under Rule 3(1) of the Rules. That application was rejected by Ext. P-4 holding that the application was time barred.

8. In these Original Petitions, petitioners contended that the view taken by the Custodian that the applications are time barred is wrong. In order to appreciate the contention of learned counsel for petitioners, it would be profitable to refer to Section 3 of the Act, which reads as follows : --

"3. Private forests vest in Government--(1) Notwithstanding anything contained in any other law for the time being in force, or in any contract or other document, but subject to the provisions of Sub-sections (2) and (3), with effect on and from the appointed day, the ownership and possession of all private forests in the State of Kerala shall by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished."

Thus, except in respect of lands covered by Sub-sections (2) and (3), the ownership and possession of all private forests in the State shall by virtue of the Act, stand transferred to and vested in the Government free from all encumbrances. Sub-section (2) exempts the land held by an owner under his personal cultivation as is within the ceiling limit applicable to him under the Kerala Land Reforms Act or any building or structure standing thereon or appurtenant thereto.

Similarly, Sub-section (3) exempts so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963 is applicable does

not exceed the extent of the ceiling area applicable to him u/s 82 of the said Act. Section 8 of the Act provides that where any dispute arises as to whether, (a) any land is a private forest or not; or (b) any private forest or portion thereof has vested in the Government or not, the person who claims that the land is not a private forest or that the private forest has not vested in the Government, may within such period as may be prescribed apply to the Tribunal for decision of the dispute. Before the introduction of amendment to Section 8 by Act No. 20/81, there was no provision in Section 8 fixing a period for making an application. However, Rule 3 of the Kerala Private Forest (Tribunal) Rules, 1972 (hereinafter referred to as the Tribunal Rules" for short) framed by the Government prescribed a period of sixty days from the date on which the Act which gives rise to the dispute was done for filing an application u/s 8 of the Act. Proviso to Rule 3 also provided that the Tribunal may entertain an application presented beyond the expiry of the said period of 60 days if it is satisfied that there was sufficient cause for not presenting the application within that period. Thereafter, an explanation was added to the Rule to the effect that for the purpose of the rule, the date on which the Act which gives rise to the dispute was done, shall be the date of publication of the notification under Sub-rule (2) of Rule 2-A of the Rules in respect of the land to which the dispute relates. Proviso to the Rule was deleted while incorporating the above Explanation. By an amendment, the power conferred on the Tribunal to condone the delay in filing the application was taken away. Rule 3 of the said Rules was challenged in *Jayadevan v. State of Kerala*, 1981 Ker LT 86. The contention raised in the Original Petition was that Section 8 does not prescribe any time limit or authorise the Government to prescribe a time limit for filing application u/s 8 and therefore Rule 3 of Tribunal Rules insofar as it prescribes a time limit is ultra vires the Act. This Court upheld the contention and held that the period of limitation prescribed by Rule 3 of the Tribunal Rules is ultra vires and void and the Rule should be read omitting the words "and shall be presented to the Tribunal within 60 days from the date on which the act which gave rise to the dispute was done." This Court further held that the omitted part of Rule 3 is ultra vires, void and beyond the powers of the Government.

9. It is based on the above decision that the Government gave Ext. P-2 opinion that the period of limitation prescribed is not legally authorised by Statute. The resultant position was that there was no period of limitation for filing an application u/s 8 of the Act. To circumvent this difficulty, Section 8 was amended by Act 20 of 1981 introducing the words "within such period as may be prescribed apply to the Tribunal" in Sub-clause (b) of Section 8. The effect of the decision in *Jayadevan's* case (supra), which pointed out that in the absence of any conferment of power by the section specifically empowering the delegated authority to fix a period of limitation, the delegated authority cannot prescribe any period of limitation was thus taken away. After the amendment of Section 8, Rule 3 of the Tribunal Rules was also amended prescribing a time limit. Rule 3(1) as amended reads as follows: --

"3. Application to the Tribunal-- (1) An application u/s 8 shall be in Form A and shall be presented to the Tribunal with such number of additional copies of the application, as are necessary, to be served on the respondents within sixty days from 6th August, 1981 or from the date of publication of the notification under Sub-rule (2) of Rule 2A of the Kerala Private Forests (Vesting and Assignment) Rules, 1974 in respect of the land to which the dispute relates whichever is later."

So, it is true that the vice pointed out by this Court in Jayadevan's case (supra) to hold that the delegated authority has no power to prescribe the time to file an application u/s 8 is no longer there, as Section 8 specifically lays down that application has to be filed "within such period as may be prescribed". However, the applications filed by the petitioners are not u/s 8 of the Act or before the Tribunal. As indicated earlier, the applications are filed before the Custodian and are under Rule 3 of the Exemption Rules. The amendment to Section 8 of the Act and the consequential amendment brought about to Private Forest (Tribunal) Rules can have no application to the Exemption Rules or applications filed thereunder. It is by virtue of provisions of exemptions contained in Sub-sections (2) and (3) of Section 3 of the Act that application under Rule 3 of the Exemption Rules is filed. The exemptions are provided under the Act and unless the Act itself empowers the delegated authority to provide a time limit for making application claiming exemption, the delegated authority cannot prescribe any period of limitation. However, Rule 3 of the Exemption Rules says that application should be filed before the 25th August, 1974. The delegated authority has not been empowered to prescribe any period of limitation in respect of an application based on the exemption provided under Sub-sections (2) and (3) of Section 3 of the Act. So construed, it has to be held that period of limitation prescribed in Rule 3 of Exemption Rules is ultra vires the Act and Rule 3 has to be read omitting the words "or before the 25th August, 1974." It must have been for this reason that the Government gave Ext. P-2 advice stating that the prescription of the period of limitation is statutorily unauthorised and the Custodian is competent to deal with the application as if no such time has been prescribed, and the applications have to be disposed of in accordance with law.

In the result, I quash Ext. P-4 in O.P. Nos. 9044/91 and 7866/92 and Exts. P-5 and P-6 in O.P. No. 7271/92 and direct the 2nd respondent to dispose of the applications filed by the petitioners in accordance with law. Original Petitions are disposed of as above.