

(2003) 07 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 20946 of 1997

Niyamavedi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 35
Constitution of India, 1950 — Article 215, 226
Forest (Conservation) Act, 1980 — Section 2

Citation : AIR 2004 Ker 81

Hon'ble Judges : K.S. Radhakrishnan, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : A.X. Varghese, for the Appellant; P.S. Sreedharan Pillai, SCGSC, for No. 1, Ram Prasad Unni T., Spl. Govt. Pleader for Nos. 2 to 6 and 8 and V. Giri, for No. 7, for the Respondent

Judgement

1. The Apex Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, held that the principle of "finality of litigation" held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. The Apex Court held that more often than not, process of the Court is being abused. Property grabbers, tax evaders, bank loan dodgers and other unscrupulous persons from all walks of life find the Court process a convenient lever to retain the illegal gains indefinitely. The Court reminded that a person, who's case is based on falsehood, has no right to approach the Court and can be summarily thrown out at any stage of the litigation. We are constrained to apply the above mentioned principle to the instant cases since we are convinced that the attempt of the applicant was to grab forest land by abusing the process of the Forest Tribunal and this Court. Before we examine the question as to how the order passed by the Forest Tribunal in O.A. No. 247 of 1979, confirmed by this Court in M.F.A. No.

328 of 1981, was vitiated by fraud and misrepresentation, we may indicate that on the guise of implementing the judgment in M.F.A. No. 326 of 1981, 20 acres of evergreen forest with thick forest trees like rosewood, chadachi, martuthu, irul, venga, venteak etc. of more than 300 years old was symbolically delivered to the applicant by the state to wriggle out of the contempt of Court proceedings initiated by the applicant. Facts would reveal that what was handed over to the applicant through contempt of Court proceedings was not the property which was claimed in O.A. No. 247 of 1979 but evergreen forest. The order passed by the Division Bench of this Court in C.C.C. No. 274 of 1997 is now sought to be reviewed by the State by filing R.P. No. 496 of 2000.

2. We will first deal with the question as to whether the property assigned to the applicant through contempt of Court proceeding was the property which was claimed in O.A. No. 247 of 1979. Applicant claimed himself to be the owner of 22.25 hectares of land, said to have been purchased by him by document No. 2685 of 1968 of the Sub Registrar. Mannarkkad which falls in survey number 2157 Part of Palakkayam village. Applicant sought exemption of 20 acres of land for which he claimed title as per document No. 2685 of 1968 which was registered with a survey sketch. Property claimed by the applicant therefore should fall within the survey sketch. O.A. No. 247 of 1979 was however, allowed by the Tribunal on 17-12-1980 holding that the application schedule property was not vested in the State which was confirmed by this Court in M.F.A. No. 328 of 1981. The question as to whether those orders have been vitiated by fraud or misrepresentation would be examined by us later. Suffice it to say what the applicant claimed in the application is the property covered by the registered document. 2685 of 1968 along with the sketch attached to it. This is an admitted fact. Let us now examine whether the land which the applicant had obtained through contempt of Court proceedings is the same land which is covered by the above mentioned document and as to whether State was forced to hand over the evergreen forest to the applicant so as to wriggle out of the contempt of Court proceedings.

3. Applicant in order to get the judgment in M.F.A. No. 328 of 1981 implemented, had filed O.P. No. 2926 of 1989 seeking writ of mandamus to restore 20 acres of land which was subject matter of O.A. No. 247 of 1979. Writ petition was disposed of by the learned single Judge on 28-8-1990 directing the Forest Department to restore the property covered by O.A. No. 247 of 1979. An affidavit was filed by the Divisional Forest Officer in the contempt case stating as follows :

"I submit that after the confirmation of the order of the Forest Tribunal by the Honourable Supreme Court of India , when steps were being taken to restore the property involved in the original application No. 247 of 1979 filed by the petitioner, it was discovered that the property claimed in the O.A. as per the title deed produced by the petitioner therein and the property now claimed by the petitioner are distinct and different. it is submitted

that the difficulty for restoration of the property to the petitioner arose because the schedule of property described in the Original Application before the Forest Tribunal did not tally with the property claimed by the petitioner on the field. It is submitted that the title deed produced before the Forest Tribunal claiming an area of 20 acres in survey No. 2157/P in Palakkayam village is document No. 2685 of 1968 of the Sub-Registry Office, Mannarghat. The total area to which the petitioner had title under the aforesaid document is 22.25 hectares (55 acres). The said title deed was registered along with a surveyed sketch of the land. Thus the property claimed by the petitioner is part of the property to which the petitioner obtained title under the aforesaid document namely, document No. 2685/68 S.R.O. Mannarghat. The petitioner, it is submitted with respect is entitled as per the judgment in the O.A. to get 20 acres of land within the surveyed sketch of 22.25 hectares (55 acres) for which he had title as per the document No. 2685/68 of the S.R.O. Mannarghat. It is humbly submitted that the petitioner is now pointing out a different area and claiming restoration of the same. The area presently claimed by the petitioner does not lie within the surveyed sketch which forms part of the title deed of the petitioners

It is submitted that as directed by the Conservator of Forests (Vigilance), Kozhikode, the Assistant Director, Forest Mini Survey, Trivandrum surveyed the property and has reported that the property of the petitioner as per the title deed produced by him in the Original Application before the Forest Tribunal does not fall within the boundaries shown in the schedule to the O.A. A true copy of the English translation of the report of the Assistant Director, Forest Mini Survey, Thiruvananthapuram bearing No. B2-1035/92 dated 6-9-1997 is produced herewith and marked as Ext. R1(f).

It is humbly submitted that the petitioner alienated the entire property covered by the title deed produced by him before the Forest Tribunal in O.A. 247 of 1979 even before he filed by the original application before the Tribunal. However, he filed the original application on the basis of the very same document, namely document No. 2685/68 of the S.R.O. Mannarghat. The said document has been registered in 1968 along with a sketch and the extent of the land is 55 acres (22.25 hectares). However, when the petitioner was asked to identify the O.A. schedule property the petitioner now points out 20 acres of virgin forest about 650 metres away from the property covered by this original title deed."

Reply affidavit has been filed by the applicant stating as follows :

"The title claimed as per deed No. 2685 of 1968 was found to be true and the title of petitioner over the 20 acres was upheld by the Manjeri Forest Tribunal and by the Honourable Supreme Court of India. It is absolutely untrue that the petitioner is pointing out a different area and claiming restoration of the same. The contention that the area claimed does not lie within the surveyed sketch forming part of the title deed is incorrect."

Therefore, the area claimed in the O.A. should admittedly fall within the surveyed

sketch forming part of the title deed No. 2685 of 1968.

4. Forest Department (Vigilance) on enquiry found that the land covered by document No. 2685 of 1968 for which applicant claimed exemption in respect of 20 acres had already been sold away by the applicant to various persons even before the filing of O.A. No. 247 of 1979. They found that the property claimed in the original application did not tally with the property claimed for restoration. The Divisional Forest Officer then requested the applicant to identify the property on the basis of the registered document 2685/68 along with the sketch. The property shown by the applicant is not the property covered by the above mentioned document. Consequently on 29-8-1987 a mahazar was prepared, relevant portion of which reads as follows :

"The agent, on request of the officials, shows the 20 acres property involved in the judgment of the above O.A. The boundaries of the property shown by the agent was verified as South Mundanadupuzha (Mundanadu river) west side Thundathil Mathai's property, North and East Government vested forest. However, no agricultural improvements viz. cashew trees were present at the time of the writing this mahazar or even before it, in the properties which were shown by the Agent. It is found as a pure patch of evergreen forest. Whereas the boundary description showed in the O.A. schedule is in the eastern side remaining part of the petitioner's possession (now it is inside the permanent cairns), in the southern side the possession of Kalladi Kunjayammu Sahib (now it is inside the permanent cairns) Western side river and in the northern side Thundathil Mathai's possession. Further the officials enquired the reason for the vast variation in the O.A. schedule boundaries and the actual field boundaries, but Shri M.H. Mohammed showed his unawareness. In continuation the officials verified the plot with the sketch incorporated with document 2685/68 which is the base for the above O.A. No. 247 of 1979. On verification, the eastern boundary in the sketch is found 650 meters westwards of the western boundary. Also it is found that the property involved in the document 2685 of 1968 are in the possession of different persons. It is confirmed that these property (22.25 hec.) was not vested in Government as per the Kerala Priyate Forest (Vesting and Assignment) Act. 1971."

Since petitioner had already obtained orders from the Forest Tribunal in O.A. No. 247 of 1979 which was confirmed by a Division Bench of this Court in M.F.A. No. 328 of 1981 the State had to find out some land so as to save its officials from the contempt of Court proceedings, consequently, Forest Department had restored 20 acres of ever green forest to the applicant lying 650 metres away from the property covered by the original title deed 2685/68 of Sub-Registry Office, Mannarghat. The land assigned lies in the middle of Mundanad Malavaram which is thickly wooded evergreen forest. There are big and rare forest trees like rosewood, chadachi, maruthu, irul, venga, venteak etc., some of which are more than 300 years old. There is also a lush growth of shrubs and undergrowth. The land is an ecologically important piece of land and the source a small rivulet by

name Mundanad thodu. The land is an ecologically fragile land within the meaning of the Kerala Forest [Vesting and Management of Ecologically Fragile Lands) Ordinance 16 of 2001.

5. The Government therefore had to issue a notification, SRO No. 2095 of 1989 dated 8-12-1989 u/s 5 of the Kerala Preservation of Trees Act 1986 published in the Kerala Gazette Extraordinary No. 1160 dated 28-12-1989 prohibiting cutting of trees from the said properties which was symbolically delivered to the applicant. It is pointed out that this Court without examining the question as to whether the land handed over by the State was the land covered by document No. 2685/68 disposed of the contempt case on 24-10-1997 recording the statement that the land had been handed over to the applicant as per Ext. A12 mahazar and Ext. A13 plan. State has now filed R.P. No. 496 of 2000 seeking review of the said orders on the ground that the order in O.A. No. 247 of 1979 as confirmed by this Court in M.F.A. No. 328 of 1981 was obtained by fraud and misrepresentation. This plea has been raised by the State after handing over the forest land so as to respect Court orders. States has thus respected the orders passed by this Court and the judgment was implemented by restoring 20 acres of evergreen forest to the applicant.

6. O.P. No. 20946 of 1997 is preferred by an Organisation by name "Niyamavedi" espousing the cause of public. They have alleged on the guise of implementing the orders in O.A. 247/79 the State has restored evergreen forest with valuable trees growth in the property claimed in the O.A. They had sought for a writ of mandamus directing the respondent State not to assign 20 acres of thick evergreen forest land to the applicant and also for a writ of prohibiting the applicant from carrying out any sort of felling activities including clearing of natural undergrowth from the said property. They also sought for a direction to the Chief Secretary to conduct an enquiry into the alleged assignment of evergreen forest to the applicant rather than the property covered by the registered sale deed 2685 of 1968 of Mannarghat Sub-Registry Office. O.P. No. 18447 of 1997 was filed by two of the assignees of the property covered by document No. 2685 of 1968 executed by the applicant in O.A. No. 247 of 1979. They sought for a direction not to proceed against their property and order an enquiry. They have voiced the concern of the people as well as the coverage given by the media about the handing over of the evergreen forest. Malayala Menorama daily dated 14-9-1997 has also projected a news item stating that the attempt was to appropriate evergreen forest. Deshabhimani daily dated 5-9-1997 also sought for an investigation into the order obtained by the applicant by suppressing material facts to grab evergreen forest. We record our appreciation of the media for the efforts they have made for exposing the cause of the public which was omitted to be taken note by two earlier Division Benches of this Court.

7. We have examined the facts in detail. Admittedly property is comprised in the document No. 2685 of 1968 of Sub Registry, Mannarghat. Plan is also attached to

the said title deed. State has taken up the stand that they could not restore the land covered by the above mentioned document since those lands were not vested in the State. On the other hand land covered by the said document was also sold to different persons before the filing of the application like petitioner in O.P. No. 18847 of 1997. State has no objection in the applicant claiming any land covered by the document. Since the applicant had obtained favourable orders from the Tribunal as against the State, the State had to obey the Court orders and comply with it. We have gone through the registered document 2685 of 1968 of the Sub-Registry Office, Mannarghat as well as the mahazar prepared by the forest officials so as to give effect to the contempt of Court proceedings. On a comparison of the mahazar as well as the sketch attached to the document, it is clear that land which was already been handed over to the applicant is not covered by the document or the sketch. We are of the view, on the basis of order in O.A. 247 of 1979 as confirmed by M.F.A. No. 328 of 1981 State cannot hand over evergreen forest to the applicant. Evergreen forest belongs to State and its people and governed by the Forest Conservation Act, 1980.

8. We may indicate the issue raised in O.P. No. 20946 of 1997 is a classic struggle between members of the public who would like to preserve forest and those charged with administrative responsibilities and the property grabbers. Necessity of preserving natural resources such as rivers, forests, seashores, air etc, for the purpose of protecting the ecosystem was highlighted by the Apex Court in M.C. Mehta Vs. Kamal Nath and Others, . The Apex Court held as follows :

"The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

State in order to preserve and manage ecological balance on the land has issued the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Ordinance, 2001. State has also issued notification on preservation of trees in the land which was handed over to the applicant. Under the Forest (Conservation) Act, 1980 no forest land could be used for non-forest purposes without the prior approval of the Central Government. We are therefore, of the view that State Government or the Forest Department have no power to hand over evergreen forest to the applicant in order to get over the contempt of Court proceeding. The course adopted by the State would have far-reaching consequence and the State will be divested of evergreen forest. On facts we are convinced what has been handed over to the applicant is not the land he had claimed in O.A. No. 247 of 1979 on the strength of document No. 2685 of 1968 but evergreen forest. We are therefore inclined to allow R.P. No. 496 of 2000 and review the judgment of this Court in C.C.C. No. 274 of 1997. Consequently O.P.

No. 20946 of 1997 and O.P. No. 18447 of 1997 would also stand allowed. Possession given on the basis of Exts. A12 and A13 of the forest land to the applicant would stand set aside. State would take immediate steps to take possession of the land which has already been handed over to the applicant.

9. We may now to examine how the order in O.A. No. 247 of 1979 which was confirmed by this Court in M.F.A. No. 328 of 1981 has to be implemented in the light of the judgment of this Court in O.P. No. 2926 of 1989 and how C.C.C. No. 274 of 1997 has to be disposed of. We have also to examine the claim made by the applicant on the strength of document No. 2685 of 1968 and the plan attached thereto. We have also to examine whether land covered by the above document had vested in the State under the Vesting Act. Contention was raised by the State that the applicant obtained orders practising fraud and misrepresenting facts before the Tribunal and also before this Court.

10. Contention was raised by the applicant that the Court shall not take such an exercise since review petition filed against M.F.A. No. 328 of 1981 was already dismissed on the ground of delay. SLP No. 16318 of 1994 filed against the said order condoning the delay was also dismissed on 3-10-1994. On hearing the counsel for both sides and perusing the entire files, we are convinced that the delay petition, C.M.P. No. 456 of 1991 in R.P. No. 17 of 1991 in M.F.A. No. 328 of 1981 was not properly considered. In order to examine whether applicant had misrepresented facts and practised fraud before the Tribunal and before this Court we have to examine few facts. Specific case in the O.A. was that 20 acres claimed by him falls within 22.25 Hectares in survey No. 2157 part in Agali village and the same is covered by Ext. A1 registered sale deed dated 2-6-1968. In the written statement filed by the Department was not eligible to get relief under Sections 3(2) or 3(3) of the Act. Further it was also stated that the property covered by the document had not been vested in the State. In the counter statement filed by the department in the O.A. it was specifically stated that the applicant has no title or possession over the area claimed. Application schedule property belonged to Mannarghat Mooppil Nair's tarward and was in their possession at the time of vesting. Application schedule property lies in the midst of vested forest with practically no separating boundary marks. The entire area and the surrounding areas contain thickly populated forest trees like Pali, Punna, Cheru and other evergreen species aged about 100 to 300 years. On enquiry it is found that certain attempts were being made to get at thickly vested forests by filing applications before the Tribunal. No cultivation had been done in the area at any time, nor is it possible to cultivate this area. R.W. 1 in the deposition has reiterated the same. The Forest Tribunal though allowed the application had also stated as follows :

"I do not see proper and sufficient reason to disbelieve the evidence of R.W. 1 regarding the nature of this property. When the property is full of very old miscellaneous forest trees, it is not at all probable that the area would have been cultivated as alleged by the petitioner. On a careful consideration of the entire

evidence and the probabilities of this case, I find that no cultivation had ever been done in the petition schedule property in order to exclude the same from the definition of a private forest under Act 26 of 1971. I find that the petition schedule property is a private forest under Act 26 of 1971."

Forest Tribunal after having found that no cultivation was ever made rejected the claim of the applicant u/s 3(2) of the Act, but upheld the claim u/s 3(3). State being aggrieved by the said order preferred M.F.A. No. 328 of 1981 stating that the land in question is a thick evergreen forest without any human approach and it forms part of a larger extent containing trees and other ever green species aged about 100 to 300 years. In ground F of the appeal memorandum it has been stated as follows. "The finding of the learned Tribunal that the applicant is entitled to get exemption u/s 3(3) of the Act, 26/71 is erroneous and unsustainable." Evidently what is meant by the State was Section 3(3) and not Section 3(2). In fact in the original application or the appeal memorandum initially it was written as S. 3(3) but later there is an overtyping as Section 3(2). Facts would indicate it can only be a mistake though with due respect, we may say the earlier Division Bench had made little bit fuss over it. Appeal was moved by the then Additional Advocate General Sri T.C.N. Menon We are rather surprised to note that the State appeal was dismissed at the admission stage by a Division Bench stating as follows :

"The main point urged by the learned counsel for the appellants here is that in order to apply S. 3(3) the claim should be under a valid registered sale deed and the registered sale deed relied on by the petitioner is not valid. Evidently what is said is that the sale deed did not confer title. It is also said at the hearing that the boundaries of the property in Ext.A1 does not agree with the lie of the disputed property. These are contentions foreign to the case as in the written statement filed in the case these had not been taken and therefore we must take it that these questions are not in issue. There, is no meaning in referring to the evidence in the case to show that these con-tentiqn should be upheld. The other point raised is that the Court below is wrong in finding, that the petitioner was entitled to exemption u/s 3(3). Going through the appeal memorandum we find that there is no challenge to the finding that the petitioner is entitled to exemption u/s 3(3). On the other hand the appeal has proceeded as if the challenge is to the finding that the exemption is claimed u/s 3(2). Exemption u/s 3(2) was found against by the Court in favour of the State. Therefore, there is no scope for challenge u/s 3(2). There is no challenge to the finding u/s 3(3). In these circumstances we are not entertaining such a challenge in this appeal. Hence the appeal is dismissed."

Appeal was dismissed on 8-3-1983 at the admission stage. The State and the Custodian of Forests had in the meanwhile filed Review Petition No, 219 of 1987, in O.A. No. 247 of 1979 before the Tribunal u/s 8B of the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 read with Order XLVII, Rule 1 of the CPC on the plea that the order of the Tribunal requires reconsideration since

State could not place relevant date or other particulars to prove that no exemption u/s 3(2) or 3(3) could be granted, Request was also made to take out a commission for gathering additional particulars and the nature of the land. State and the Custodian had also filed LA. No. 219 of 1987 for taking out a commission to establish the lie and nature of the disputed properties, tree growth and coppice growth of forest species therein and also whether the disputed area is lying contiguous with other forest area of more than 100 acres on the appointed day and also to ascertain various other details. Commissioner in the report dated 4-12-1987 stated as follows :

"The petition schedule property is a part of Mundanad Malavaram an extensive hill with vast area of more than 2000 acres. The particular property of 20 acres within the boundaries as shown in the petition schedule is a thick coppice forest with full of tree growths like Pulamaruthu, Chadachi, Vake punna and other forest species. At no time the trees were cut and it is a virgin forest. The western boundary is small river called Mudanadu puzha and the northern boundary is a rubber plantation. In the eastern side of the said twenty acres the same forest with trees continues for hundreds of acres till it reaches a big rocky cliff in the mountain. So also in the southern side the thick forest continues to extensive area. To locate the exact boundaries of the twenty acres in the eastern side and the southern side is impossible unless the portion is carved out on the basis of exact East West measurement from the river and North South measurement from the rubber plantation. No such measurement is provided in the petition except the measurement of the area as twenty acres. However I could observe that if twenty acres is carved on the basis of the given boundaries on the western side and the northern side that area will only be a part of coppice forest with full of trees. There are no cashew or other trees planted with human effort except the natural growths."

Objection was filed to the commission report by the applicant. However review petition was dismissed on 14-3-1988 since M.F.A. No. 328 of 1981 was dismissed on 8-3-1983, In fact the dismissal of M.F.A. No. 328 of 1981 was of no consequence since review petition was filed before the Tribunal u/s 8B of the Act and the Tribunal could have passed an order on the view petitioner on merits, notwithstanding any judgment, decree or order on merits notwithstanding any judgment, decree or order any Court. The circumstances under which Sections 8B and 8C were introduced are well known since large number of forest cases either were concerned by the Government Pleader before the Tribunal and before this Court or not properly conducted.

11. We have indicated though this Court had dismissed M.F.A. No. 328 of 1981 Tribunal could have passed an order in the Review Petition notwithstanding any judgment, decree or order of any Court u/s 8B We fail to see why the Government Pleader did not press this matter before the Forest Tribunal. State of Kerala and the Custodian of Forests later filed a review petition under Order XLVI, Rule 1 on 3-1-1991 with a petition, C.M.P. No. 456 of 1991, for

condonation of delay of seven years eight months and 26 days to review the judgment in M.F.A. No. 326 of 1981. A detailed affidavit of the Custodian and Conservator of Forests dated 1-1-1991 was also filed in support of the petition for condonation of delay. Paragraphs 4 to 6 of the petition had dealt with the reasons for the delay in the review petition, so also the circumstances which warranted review of the Judgment. In the affidavit filed in support of the petition for condonation of delay as well as the review petition it has been stated as follows :

"The order of the Forest Tribunal as well as the judgment of this Honourable Court in the M.F.A. were obtained on suppression of material facts and evidence and it was the result of fraud and misrepresentation.

It was also stated as follows :

"The relief u/s 3(3) of the Act was granted on the ground that the applicant is holding the property under a valid registered document executed prior to the appointed day. As a matter of fact as on the date of application the applicant had no title to the property in dispute or any part thereof. The entire area covered by Ext. A1 had been alienated to different persons by the applicant by the time the O.A. was filed. The encumbrance certificate produced herewith will prove these facts. This new and important matter of evidence could not be brought to the notice of either the Tribunal or this Honourable Court after exercise of due diligence and it was not within the knowledge of the review petitioners.

Further it was also stated that the review petition filed u/s 8B was rejected by the Tribunal holding that the said petition was not maintainable since the order reviewed was concluded by the judgment of this Court in M.F.A. No. 328 of 1981. Several documents were attached with the review petition. Division Bench of this Court however dismissed the petition to condone the delay. Consequently review petition was also dismissed on 18-11-1993. Special Leave to Appeal No. 16318 of 1994 was preferred before the Supreme Court and the same was also dismissed. We may indicate, even before the dismissal of C.M.P. No. 456 of 1991 in R.P. No. 17 of 1991 applicant had filed O.P. No. 2926 of 1989 for writ of mandamus directing restoration of the property and that writ petition was allowed on 28-8-1990 and the State and the Custodian have filed R.P. No. 63 of 1991 to review the judgment.

12. State and the Custodian had later filed a petition on 3-11-2000 to review the order in R.P. 17 of 1991 along with a petition to condone the delay of 2324 days in filing the same. State pointed out that the attempt of the applicant is to grab a portion of thick forest land on the basis of forged documents and suppression of material facts and on the basis of Court orders obtained by representing facts. Application for condonation of delay as well as the prayer to entertain the second Review Petition was opposed by the counsel for the applicant contending that under Order XLVII, Rule 1, no application for review of an order passed on a review petition shall be entertained. We also endorse the view that no second

review petition would lie. Consequently unnumbered petition filed on 3-11-2000 so as to review the order dated 18-11-1993 passed in C.M.P. No. 456 of 1991 in R.P. No. 17 of 1991 cannot be maintained, resultantly that petition would stand dismissed.

13. We have already indicated in our earlier part of the judgment that we are convinced that the property which was handed over to the applicant was not the land covered by the document No. 2685 of 1968 and it was a virgin forest vested in the State. Contention raised by the State all along was that the applicant had practised fraud and misrepresented facts before the Tribunal and other authorities stating that the properties covered by the above mentioned document No. 2685 of 1968 were vested in the State. It has come out in evidence that the land covered by the document No. 2685 lying 650 metres away from the land claimed in the original application. Land covered by document No. 2685 of 1968 is fully developed agricultural land which has been sold away by the applicant himself to various persons even before the filing of the O.A. 247 of 1979. Some of them are petitioners in O.P. No. 18447 of 1997. We have gone through the sketch attached to the said document vis-a-vis schedule given to the O.A. We have also perused documents produced by the State along with review petition No. 17 of 1991, encumbrance certificate as well as sketch attached to document No. 2685 of 1968 on which applicant traced his title. Sketch along with the document is produced as Ext. P1(b) along with the review petition. 22.25 hectares mentioned in the sketch is the property to which applicant traced his title and rest is claimed in the application. It is evident from the sketch that 22.25 hectares is on the western side and the applicant's wife's property covered by document No. 2684 of 1968 is on the east of the property beyond the property of the applicant's wife. Since the applicant traces his title to document No. 2685 of 1968 the application schedule property can only fall within the sketch produced along with the document. Application schedule property as well as the property now claimed by him lies on the eastern side and in the west property claimed in the O.A. as well as the sale deed 2685 of 1968 belongs to applicant's wife by document No. 2684 of 1968. These facts would clearly show that the applicant is trying to defraud the State and to get at pucca evergreen forest which lies further east to the petitioner's wife's property. The fact that the property scheduled in the O.A. as well as the claim made by him is pucca forest forming part of extensive forest area of 2500 acres is borne out from the report of the commissioner submitted on 4-12-1987 before the Tribunal when the order was sought to be reviewed.

14. We are of the view, the above mentioned vital facts were not taken into consideration by the Division Bench while examining the question whether delay could be condoned or not though these facts were made known to the Court when the delay petition came up for consideration. The Division Bench has proceeded as if there was a delay of more than 7 years, 8 months and 26 days in filing the petition. It may be noted that if at all there was delay, the delay was only from 14, 1983 onwards, that means, there was a delay of only three years.

Since we are convinced that material facts were suppressed before the Tribunal and before this Court and that fraud has been practised by the applicant by misrepresenting facts we are inclined to suo motu condone the delay in filing R.P. No. 17 of 1991. We do so in exercise of powers conferred under Article 215 of the Constitution of India. The decision of the Supreme Court in *M.M. Thomas Vs. State of Kerala and Another*, and the decision of the Division Bench of this Court in *State of Kerala v. Joseph* (2002) 2 KLT 847 lend support to our decision. Since we have condoned the delay suo motu, R.P. No. 17 of 1991 would stand restored. Consequently the dismissal of the second review petition is of no consequence.

15. We have found along with the review petition State has produced Ext. P1 (a) encumbrance certificate and Ext. P1 (b) document and also copy of document No. 2685 of 1968. We have perused those documents. Facts would indicate that the applicant had sold away property covered by document No. 2685 of 1968 to various persons. In fact serial numbers 9, 10 and 11 were effected by the daughter of the applicant under a separate agreement from the applicant for and on behalf of the applicant. Over and above the eleven transactions, applicant alienated 1.92 acres on 2-12-1971 under document No. 3390/71 to one Kakkaniyil Joseph and Eliyamma. The total extent including the 5 acres gifted under Ext. A2 will come to 54.96 acres which would exhaust the entire area covered by Ext. A1 claimed to be in the possession of the applicant. Application was filed by the applicant in the year 1979 and at the time of the application he had no title over the land under Ext. A1 document. This important fact was suppressed before the Court below. It has come out in evidence that as per document 2684/ 1968 applicant's wife Beeyumma had obtained 20.63 hectares of land from the same assignor on the same date. This fact was also suppressed before the Tribunal as well as before this Court. Encumbrance certificate obtained from the Sub-Registry Office, Mannarghat in relation to 22.25 hectares of land comprised in survey number 2157 part covered by Ext. A1 document was produced along with sketch which would disclose the various transactions effected in respect of 22.25 hectares of land. Since the applicant had no title over the property in question as on 10-5-1971 no relief also could be granted u/s 3(3) of the Vesting Act. Assuming that he had title to the property as per document No. 2685/1968 even then the property claimed in the O.A. is not the property which would come within the said deed. Evidence adduced by the Department in this proceeding was only to that effect and that fact alone. Forest Tribunal originally allowed the application. State filed appeal M.F.A. No. 328 of 1981 before this Court but was dismissed at the admission stage itself. Public interest was put to jeopardy by the conduct of the case before the Tribunal and before this Court. A Division Bench of this Court in *V. M. Abraham v. State* (1987) 1 KLT 57 deprecated the conduct of some forest officials as well as the counsel who conducted the case before the Tribunal as well as before this Court. Full Bench of this Court reiterated the same in *Pankajakshy Amma and Others Vs. Custodian of Vested Forest and Conservator of Forests, Vested Forests Circle,*

Kozhikode and Others, . We are of the view this case falls under that category. In the application it has been stated by the applicant that the schedule property was covered by document No. 2685/68 consists of cashew trees, plantains, pepper wiles etc. It has come out in evidence that there is a wrong description in the schedule for the property. Commission report would indicate that it is a virgin forest part of which is malavaram having more than 2,000 acres. In such circumstances, we are of the view sufficient grounds have been made out by the State to review the judgment in M.F.A. No. 328 of 1981. In such circumstances, we are inclined to allow R.P. No. 17 of 1991. Consequently judgment in M.F.A. No. 328 of 1981 would stand reviewed and the O.A. 247 of 1979 would stand dismissed. Since we are allowing M.F.A. No. 328 of 1981 and dismissing the O.A., needless to say all the orders passed for implementation of the judgment in M.F.A. No. 328 of 1981 have no legal effect and those orders would also stand reviewed.

16. Grievances voiced by the public through Malayala Manorama daily and Deshabhimani daily is justified and deserves appreciation. Facts projected by them, in our view, have not been properly appreciated by the earlier two Division Benches of this Court. We are happy we could correct an error committed by this Court due to misrepresentation of facts and this Bench is happy since we could rectify the mistake committed by this Court lest posterity Would point its finger at us, which we would avoid at any costs.

17. We would have ordered heavy costs in this case in favour of the State since the applicant had practised fraud and suppressed material facts before the Tribunal as well as before this Court but for the fact that in the earlier part of these proceedings forest officials then in charge as well as the counsel engaged at that time were not properly conducting the case. Hence we decline costs. The order in O.A. 247 of 1979 is set aside. R.P. No. 17 of 1991 in M.F.A. No. 328 of 1981 would stand allowed and R.P. No. 496 of 2000 in CCC No. 274 of 1997 also would stand allowed. So also O.P. Nos. 20946 of 1997 and 18447 of 1997. The State Government and the Forest Officials would take immediate steps to restore the land given to the applicant under Exts. A12 and A13.