

(1995) 01 KL CK 0055
In the High Court Of Kerala
Case No : M.F.A. No. 325 of 1989

Pankajakshi Amma

APPELLANT

Vs

Custodian of vested forest and Others

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (1995) 1 KLJ 215

Hon'ble Judges : M.M. Pareed Pillay, Acting C.J.; T.V. Ramakrishnan, J; P. Shanmugam, J

Bench : Full Bench

Advocate : P.N.K. Achan and P.N. Ravindran, for the Appellant; Jose K. Kochupappu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—The question that arises for consideration is whether and if so to what extent the provisions of order XLVII C.P.C. would apply to review petition filed before the Forest Tribunal u/s 8B of the Private Forests (Vesting and Assignment) Act, 1971, hereinafter called as "the Act", or before the High Court u/s 8C of the Act. The appellants herein filed an application O.A. No. 851 of 1974, before the Forest Tribunal, Palghat, claiming Exemption/exclusion for an extent of 7.22 acres of land situated in Nochipully Palghat taluk and District, from vesting in the Government under the said Act. The Forest Tribunal passed order dated 28th May, 1977 upholding the claim and allowed that application. The respondents herein filed a review petition, I.A. No. 370 of 1987, u/s 8B of the Act. The Tribunal allowed the review petition and set aside the order passed in O.A. No. 851 of 1974 holding that the appellants are not entitled to the claim made by them. As against the order of the Tribunal the appellants filed M.F.A. No. 325 of 1989 contending that the order of the Forest Tribunal allowing the application for review is contrary to law and against the evidence in the case. When the matter came up before the Division bench one of the contentions

raised on behalf of the appellants was based on the decision in *State of Kerala V. Ahamadkuty Haji & Others* (1987) (2) KLT 406 wherein the Bench has taken the view that at the stage of consideration of the review petition on merits, the grounds mentioned in Order XLVII Rule 1 C.P.C. has to be established and if any one of those grounds is not established, review cannot be allowed. The referring Bench was of the opinion that the said decision requires reconsideration.

2. Mr. P.N.K. Achan, Senior Counsel appearing for the appellants, submitted that section 8B of the Act enables the Custodian to apply for review of the decisions before the Tribunal, if he is satisfied that such decision has to be reviewed on the following grounds:

(a) that the decision was on the basis of concessions made before the Tribunal without the authority in writing of the Custodian or the Government;

(b) the decision was made due to the failure to produce relevant data or other particulars;

(c) an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy.

The Learned Counsel for the appellants proceeds to submit that the Tribunal can review the judgment only if these three conditions are satisfied, and Tribunal cannot go beyond these conditions and find out any other defect in the order for the purpose of reviewing its own judgment. Applying this principle the order impugned does not satisfy any of the conditions to review. According to the Learned Counsel none of the grounds set out in the application has been made out to warrant the applicability of Section 8B of the Act. According to him the Tribunal is wrong in taking note of the data collected long after the date of the disposal of O.A. and it will amount to supplying the data failed to be produced before the Custodian. According to the Learned Counsel, the findings of the Tribunal that the disputed land is part of a private forest are not based on any evidence. Finally Learned Counsel submitted that the applicants have not been given sufficient opportunity to establish their case.

3. Mr. Jose K. Kochupappu, Government Pleader appearing on behalf of the respondents, submitted that he has raised ground Nos. 3, 4 and 5 as the legal points and the remaining grounds to substantiate the stand of the Government in his memorandum of review petition filed u/s 8B" of the Act. In the prayer the Government has sought for the review of the order, issuance of notice to the respondent and to allow further opportunities to the revision petitioner to adduce evidence both oral and documentary. According to him the original order was passed without the relevant and vital data which goes into the root of the matter and therefore after going through the documentary evidence the Tribunal has rightly allowed the review petition and negated the claim of the appellants. The learned Government pleader submits that the earlier order of the Tribunal suffers from errors apparent on the face of record and therefore the order was justifiably reviewed.

4. We have heard the arguments of both sides and gone through the records of the case carefully. We are of the view that Section 8B gives power to the Custodian to apply for review if he satisfies that the decision of the Tribunal has been made on the basis of the concessions or due to the failure to produce the relevant data or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy. u/s 8B (3) of the Act, on receipt of an application under sub-section (1) of section 8B the Tribunal shall review decision and pass such orders as it may think fit. On a plain reading of the Section that the satisfaction of any one of the three grounds has to be established as a condition precedent for the Custodian to make an application for review. But the provision does not say that the same or similar grounds must be in existence for the purpose of the Tribunal to satisfy itself before reviewing the order. To restrict the power of the review only to such of those three grounds for which the custodian has to be satisfied will be restricting the scope of the review of the Tribunal. Similarly it would be a further restriction of the power to review u/s 8B of the Act if the power is treated as analogous to the power of review under order XLVII Rule 1. C.P.C. Section 8 B of the Act has been brought into existence by Amendment Act 36 of 1986 for a definite purpose, The background of such an amendment has been set out in the decision in V.M. Abraham V. State of Kerala and others 1987 (1) KLT sh. No. 57. Public interest was put in jeopardy by the conduct of certain officers in charge of litigation before the Forest Tribunals and before this Court as well as the conduct of some counsel who appeared for the State and the Custodian in some of the cases. The Legislature thought it fit to incorporate these provisions enabling the Custodian or the Government, as the case may be, to seek review of the decisions or prefer appeal before the High Court notwithstanding the fact that the period of limitation prescribed has expired, if the Government or the Custodian are satisfied about the existence of any one of the three grounds set out in section 8B (1) of the Act. There is nothing in the provisions of the Act to indicate that the review petition has to be dealt with in accordance with the provisions of Order XLVII Rule 1 C.P.C. On the contrary the provisions under the Act make it clear that the power is to be invoked notwithstanding anything contained in this Act or in the limitation Act or in any law by the time being in force. The said provision has been upheld by a Division Bench of this Court in Govindan Thirumulpad V. State of Kerala 1988 (1) KLT 865 in which one of us was a party. According to the said decision, conferment of such drastic powers seems to us to be fully justified by the recitals contained in the preamble, which discloses a sorting state of affairs in the conduct of cases dealing with private forests. The Division bench has also upheld competency of State legislature to pass such an order. Before the said Division Bench one of the contention was that the grounds mentioned for justifying the application for review by state or the Custodian amount to conferment of additional and undeserving privileges of one of the litigants, in addition to and in super session of provisions of order XLVII Rule 1 C.P.C. While dealing with the said contention the Division bench in paragraph 29 held as follows:

The effect of Section 8C (3) of Act 36 of 1986, as we understand it, is not to impair the efficacy of a writ of mandamus already issued by this Court, but to enable the court to consider more comprehensively as to what should have been the judgment which this Court would have rendered, had all the relevant facts or relevant data and materials been properly brought before it and had there not been any suppression or misrepresentation of facts. That we believe is in substance, the effect of the provisions of the Code of Civil Provisions of the CPC dealing with the power of review, viz. s. 114 and Order XLVII of the CPC as well.

5. In another Division bench of this Court in *State of Kerala V. Thomas* 1989 (1) KLT 201) similar contention was raised to the effect that court has to exercise the power of review only if it is found that circumstances are therefore justifying the exercise of power of review under Order XLVII Rule I C.P.C. or other cognate circumstances. While dealing with this contention following the decision in *MMB Catholicos V. Athanastus* AIR 1954 S.C. 526 the court held that:

...The power of review is a well-known concept. It ordinarily does not enable reconsideration of the propriety of the prior order or authorise appreciation of evidence afresh unless the specific reasons stated in Order 47 Rule 1 or "other sufficient reasons" are shown to exist. But if sufficient grounds are made out, it does not preclude this Court from reviewing the entire evidence. We are of the opinion that order 47 Rule 1 of the CPC is not and was not meant to be exhaustive. The Rule itself left room for the Court to interfere if other sufficient reason was made out. That elbow room seem to us to have been further enlarged. This seems to be the position in view of the specific provisions contained in S. 8 C (5). That was the view taken by another Division bench of this Court in the decision in R.P. No. 166 of 1984 in M.F.A. No. 358 of 1980.

6. The above decisions strengthen our view that the power of review u/s 8B(3) of the Act is not restricted or controlled by Section 8B(1) of the Act. Order XLVII Rule 1 C.P.C. does not apply to the review of order passed under the Act. The view of the Division bench in *State of Kerala V. Ahamadkuty Haji & Others* 1987 (2) KLT 406 holding that the provisions of Order XLVII Rule 1 C.P.C. must apply for review petition cannot therefore be the correct view for the reason's set out above. The Tribunal while dealing with the application for review is not restricted to the grounds mentioned u/s 8(1) of the Act. There may be grounds like discovery of a vital evidence which after due diligence was not within the knowledge, or omission to note the point of law, or an error apparent on the face of face record, or erroneous assumption as to material fact or where the Tribunal has omitted to try a material issue or any other sufficient reason. Thus the grounds of review are not exhaustive and in the light of the amendment it cannot be restricted to specified grounds. However so far as the High court is concerned it has inherent power to review besides power u/s 8C of the Act. Once review is allowed the Tribunal has to go into the issues afresh and consider the matter. Coming to the facts of the case it is found that on the basis of the report of the Commissioner, Ext. C1, the property is a fenced paramba where rubber is planted

aged 7 years indicating that they were planted in the land after the date of vesting. Commissioner has reported that to the east, south and north of the disputed property there is a shrub jungle. Commissioner has further stated that on the four sides of the disputed property it is vested forest. Based on that view the Tribunal found that the disputed property is part of a private forest. The Tribunal further found that the applicant is not entitled to the benefit of section 3(3) of the Act since he has not proved his title and that he was not in personal cultivation of the property on the appointed day. On the facts and circumstances of the case the tribunal has come to the conclusion that the applicant is not entitled to the benefit of section 3(2) of the Act also. The appellant was given sufficient opportunity while considering the review petition. In the result the O.A. was dismissed and the review application was allowed. We do not find any infirmity in the factual findings of the Tribunal nor we find any other in reviewing the order passed earlier.

In the circumstances of the case the appeal is dismissed, no order as to costs.