

(1988) 09 KL CK 0044

In the High Court Of Kerala

Case No : M.F.A. No's. 549, 550, 551, 559, and 160/83

Sadasviva Saralai

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8, 8A
Limitation Act, 1963 — Section 5

Citation : (1988) 2 KLJ 535

Hon'ble Judges : V. Sivaraman Nair, J;M. Fathima Beevi, J

Bench : Division Bench

Advocate : V. Divakaran Poti, Joshy Jybady and K. P. Balasubramanyan, for the Appellant; M. C. John Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sivaraman Nair, J.—The common question which arises in this batch of appeals from the judgment of the Forest Tribunal, Kozhikode is whether that Tribunal was right in holding that section 5 of the Limitation Act did not apply to it. The appellants herein had filed applications u/s 8 of the Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971 before the Tribunal. All those applications were filed beyond the time fixed under rule 3 read with section 8 of Act 26 of 1971. The applicants requested for condonation of delay in separate applications which were filed u/s 5 of the Limitation Act. Each one of them had stated reasons, which, according to them, justified condonation of delay in filing the applications. The Tribunal refused to consider the applications on merits for the reason that the Tribunal not being a Court, section 5 of the Limitation Act was not applicable to it, and the applications could not, therefore, be entertained. Consequently, the applications were dismissed. The appellants challenge the dismissal of those applications u/s 8A of Act 26 of 1971. The Tribunal relied upon the decision of the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . It also referred to two earlier decisions reported in Brajnandan Sinha Vs. Jyoti

Narain, , and Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, . The Tribunal also relied on the decisions of this court in Commr. of Agrl. Income Tax V. T. R. Industries, 1981 KLT 398 and Raman V. Kunhipennu, 1981 KLT 844, Beeran V. Rajappan, 1980 KLT 210 and E. S. I. Corporation V. Ramadas Raddiar, 1980 KLT 425, to hold that section 5 of the Limitation Act would apply only to courts which were constituted under the CPC or Code of Criminal Procedure and not to Tribunals of limited jurisdiction.

2. Counsel for the appellants relied on Brajnandan Sinha Vs. Jyoti Narain, and Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, , and some of the observations contained in Cheru Ouseph V. Kunhipattumma, 1981 KLT 495 and Mary V. Cherchi, 1980 KLT 353. A bench consisting of one of us (Sivaraman Nair, J) had occasion to consider the same question in the decision reported in Joseph V. State of Kerala, 1987(1) KLT 651. That decision was based almost entirely on the observations contained in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., . In two earlier cases before the Supreme Court, the question which was considered was whether a commissioner appointed under the Commission of Enquiries Act, or the Registrar functioning under the Co-operative Societies Act, would be "courts" under the Contempt of Courts Act. It is true, that the Supreme Court observed, that--

In order of constitute a Court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement,

The question whether a Tribunal with the limited jurisdiction is a court u/s 5 of the Limitation Act did not arise for consideration in those two decisions. We are bound by the later decision, which was rendered on the specific question which is now raised before us. A Division Bench of this court in Joseph v. State of Kerala, 1987 (1) KLT 651 has answered the question against the appellants on the basis of the decision in Athani Municipality case (Supra). We are not persuaded to take a different view now.

3. We find, that this court had taken a consistent view that Tribunal with limited jurisdiction cannot be considered as Courts for purpose of the Limitation Act. Reference may be made in Vareed v. Mary 1963 KLT 583, Jokkim Fernandez v. Amino Kunhi Umma 1973 KLT 138 and Commr. of Agrl. Income tax v. T. R. Industries, 1981 KLT 398. In this view, we are not persuaded to hold, that the Forest Tribunal went wrong in holding that the applications for condonation of delay in filing the Original Applications were not maintainable, or the Tribunal had no jurisdiction to entertain applications filed u/s 5 of the Limitation Act for condoning the delay in the applications u/s 8 of the Kerala Private Forests (Vesting and Assignment) Act, 26 of 1971.

The appeals, therefore, fail and are hereby dismissed. In the circumstances of the case, there will be no order as to costs.