

(1997) 10 KL CK 0015
In the High Court Of Kerala
Case No : M.F.A. No. 655 of 1989

State of Kerala and Another

APPELLANT

Vs

K. Thomas Sebastian

RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8B

Citation : AIR 1998 Ker 44 : (1998) 1 ILR (Ker) 489

Hon'ble Judges : N. Dhinakar, J;K.K. Usha, J

Bench : Division Bench

Advocate : M.R. Sabu, Govt. Pleader, for the Appellant; Sebastian Devis and P.V. Jyothi Prasad, for the Respondent

Judgement

Dhinakar, J.—The only question that arises for consideration in this M.F.A. is whether the Forest Tribunal has jurisdiction to entertain a petition u/s 8-B of the Kerala Private Forests (Vesting and Assignment) Act (Act 26/71) for short "the Act" to review an order passed by it subsequent to 19-11-1983, the date with effect from which the Amendment Act 36/86 introduced Section 8-B into the original Act.

2. O.A. No. 27 of 1985 was filed before the Forest Tribunal by the respondent in this M.F.A. u/s 8 of the Act for a declaration that, the schedule property mentioned in the said petition was never a vested forest but was a plantation on 10-5-1971 and in any event he is entitled to get a relief either u/s 3(2) or 3(3) of the Act. The Tribunal by its order dated 18-6-1986 allowed the said O.A. On 31-3-1987 a review petition in I.A. No. 361 of 1987 was filed before the Tribunal by the appellant in this M.F. A. seeking review of its earlier order dated 18-6-1986. The Forest Tribunal took the view that the review petition filed by the appellant u/s 8-B of the Act is not maintainable and hence this M.F.A. to this Court.

3. Section 8-B as well as Section 8-C and 8-D were inserted by Amendment Act 36/86 giving retrospective effect from 19-11-1983. Before it was introduced by

Amendment Act 36/86 the above provisions were introduced to the main Act initially by way of the Kerala Private Forest (Vesting and Assignment) Amendment Ordinance 1983 (39/83) which came into effect on 19-11-1983, and the same was extended from time to time until it became Amendment Act 36/86 as mentioned above. The preamble to Act 36/86 contains the reason for the amendment. The recitals in the preamble, which in our view, are relevant for the consideration of the present M.F.A. are as follows :

"Preamble:-- WHEREAS a large number of applications filed before the Tribunals u/s 8 of the Kerala Private Forests (Vesting and Assignment) Act, 1971 have been decided in favour of the applicants either on the basis of concessions made before the Tribunals without the authority in writing of the Custodian or the Government or due to the failure to produce relevant data and other particulars before such Tribunals;

AND WHEREAS in a large number of cases, appeals have not been preferred before the High Court against such decisions of the Tribunals by reason of the delay in applying for and obtaining the certified copies of those decisions or on the ground that the decisions were made on the basis of concessions made before the Tribunals or on other grounds;

AND WHEREAS a large number of appeals filed by the Government before the High Court u/s 8-A of the said Act have been dismissed by that Court either on the basis of concessions made before the Court without the authority in writing of Government or due to the failure to produce the relevant data and other particulars before the said Court;

AND WHEREAS petitions by the Government for special leave to appeal against the orders of the High Court u/s 8-A of the said Act have been dismissed by the Supreme Court.

AND WHEREAS a large number of the judgments and orders of the High Court in writ petitions or other proceedings, relate to private forests vested in the Government and such judgments and orders have been passed due to suppression or misrepresentation of facts or due to failure to produce relevant data and other particulars before the said Court;

AND WHEREAS possession of large extent of private forests or lands comprised in private forests which have vested in the Government under the said Act are liable to be restored by the Custodian to the persons who were owners thereof immediately preceding the commencement of that Act, resulting in great loss to the State and detriment to the public interests;

BE it enacted in the Thirty-Seventh Year of the Republic of India as follows:--"

The entire scheme of Act 36/86 and the Ordinances which preceded the same by which power is conferred on the custodian to file an application for review u/s 8-B is based on the declaration contained in the preamble of the enactment. If the custodian is satisfied that any decision of the Tribunal u/s 8 requires to be

reviewed on the ground that such decision has been made on the basis of concessions made before the Tribunals without the authority in writing of the custodian or the Government or due to the failure to produce the relevant data and other particulars before such Tribunals or that an appeal against such decisions could not be filed by reason of the delay in applying for and obtaining the certified copy of such decision, he may make an application to the Tribunal for review of such decision. At this stage, we may also mention that when Section 8-C was questioned before this Court, a Division Bench in *Govindan Thirumulpad v. State of Kerala* 1988 (1) Ker LT 865, held that the amendment was constitutionally valid.

4. Section 8-B under which the review petition before the Tribunal was filed, reads as follows :

"8-B. Power of Custodian to apply for review of decisions of Tribunal :-- (1) Notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any other law for the time being in force, or in any judgment, decree or order of any Court or other authority, the Custodian may, if he is satisfied that any decision of the Tribunal u/s 8 requires to be reviewed on the ground that such decision has been made on the basis of concessions made before the Tribunal without the authority in writing of the Custodian or the Government or due to the failure to produce relevant data or other particulars before the Tribunal or that an appeal against such decision could not be filed by reason of the delay in applying for and obtaining a certified copy of such decision, make an application to the Tribunal during the period beginning with the commencement of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986 and ending on the 31st day of March, 1987 for review of such decision.

(2) An application under Sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner.

(3) On receipt of an application under Sub-section (1), the Tribunal shall, notwithstanding anything contained in this Act or in the Limitation Act, 1963 (Central Act 36 of 1963), or in any law for the time being in force, or in any judgment decree or order of any Court or other authority, review decision and pass such orders as it may think fit."

As stated earlier, the order of the Tribunal in O.A. No. 27 of 1985 was passed on 18-6-1986 and the review petition was filed on 31-3-1987 contending that the section gives time to the Government till 31-3-1987 to file the review application. The Tribunal took the view that the review petition is maintainable u/s 8-B only to cases disposed of prior to 19-11-1983.

5. The Government Pleader appearing in this appeal reiterated the very same contention which was raised before the Tribunal and submitted that as the review application before the Tribunal was filed on 31-3-1987 it is well within time as contemplated u/s 8-B(1) and hence the Tribunal ought to have entertained the

same.

6. Amendment Act 36/86 was passed under very peculiar circumstances as could be discerned from the preamble to the Act. Review applications u/s 8-B could be filed only if the grounds mentioned in Section 8-B exist. The Act came into force with retrospective effect from 19-11-1983. The language of Section 8-B would show that the application for review can be made by the custodian in respect of an order already passed by the Tribunal before the amendment came into force if he is satisfied that the order is bad for the reasons mentioned in the Section. The said Section does not contemplate a review application in cases decided subsequent to 19-11-1983. Prescription of last date as 31-3-1987 does not mean that review application can be filed from any order passed by the Tribunal till 31-3-1987. It has to be taken only as the last date for filing review petitions in cases which were disposed of prior to 19-11-1983 as the words occurring in the section "make an applicationfor review of such decision" would indicate. It is essential that the person who invokes the power shall prove the existence of jurisdiction as pre-condition which alone justifies the exercise of the power as observed by the Division Bench in 1988 (1) Ker LT 865 supra. The words "such decision" occurring in the said section, in the context of the preamble, show that the review applications can be filed only in respect of orders passed prior to 19-11-1983. The operation of Section 8-B is strictly restricted to cases in which orders were passed prior to the introduction of Section 8-B on 19-11-1983, but not to the subsequent orders. In our view, the Tribunal was justified in refusing to entertain the review petition filed u/s 8-B of the Act.

7. On the discussion made above, the M.F.A. is liable to be dismissed and it is accordingly dismissed.