

(1993) 07 KL CK 0017

In the High Court Of Kerala

Case No : R.P. No. 40 of 1984 in MFA No. 470 of 1979

State of Kerala and another

APPELLANT

Vs

Moideen

RESPONDENT

Date of Decision : 13-07-1993

Acts Referred:

Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 8A, 8C(2)

Citation : (1993) 2 KLJ 537

Hon'ble Judges : T.L. Viswanatha Iyer, J;P. Krishnamoorthy, J

Bench : Division Bench

Advocate : P.K. Behanan, Govt. Pleader For State, for the Appellant; P.N. Ravindran, for the Respondent

Final Decision : Dismissed

Judgement

Viswantha Iyer, J.—There is no merit in this review petition. The appeal had been dismissed as belated as early as on 1st February 1980. The present petition for review has been filed u/s 8C (2) of the Kerala Private Forests (Vesting and Assignment) Amendment Ordinance 39/83 now replaced by the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986, which is deemed to have come into force on the 19th day of November, 1983. The review petition has been filed beyond the normal period of limitation prescribed for a review and it is sustainable only if it is liable to be brought within the purview of section 8C (2), the order sought to be reviewed being an order in an appeal filed u/s 8A of the Act. Section 8C(2) provides for a review only in three specified circumstances as could be seen from it. We shall extract section 8C(2):-

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 Government, if they are satisfied that any order of the High Court in an appeal u/s 8A (including an order against which an appeal to the Supreme Court has not been admitted by that Court) has been passed on the basis of concessions made before the

High Court without the authority in writing of the Government or due to the failure to produce relevant data or other particulars before the High Court or that an appeal against such order could not be filed before the Supreme Court by reason of the delay in applying for and obtaining a certified copy of such order, may 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, make an application to the High Court for review of such order.

One or other of the three conditions mentioned should be proved to exist before the petitioners could sustain an application for review under this provision. There is no case for the petitioners that the third ground namely that an appeal could not be filed before the Supreme Court by reason of the delay in applying for and obtaining a certified copy of this court's order exists in this case. The appeal having been dismissed out of time, the second ground namely failure to produce relevant data or other particulars before this court also cannot be stated to exist for the reason that this court's order was not passed by reason of such failure, but because of the default on the part of the appellants in filing the appeal in time. The ground on which the learned Government Pleader laid much stress was that this court's order had been passed on the basis of concessions made before it without the authority in writing of the Government. The contention is that the very filing of an appeal out of time is a concession, bringing the case within the first of the three grounds mentioned in section 8C (2). We are unable to agree. Concession is an act of concealing, granting or yielding. It contemplates a positive act on the part of the person making the concession by which a benefit is derived by the person in whose favour it is made. Omission to take any action or some default is not ipso facto a concession. That the concession envisaged by section 8C (2) envisages a positive act is evident from the fact that it is one to be made before this court. In other words, there should be first a concession and secondly that concession should be before this court, in order to afford a ground for review u/s 8C (2). Delay in filing an appeal, be it for whatever reasons, is not a concession made before this court.

2. At best and even going by the arguments of the Government Pleader, it may be a concession made to the party concerned, but certainly not one before this court, We are not therefore satisfied that the delayed filing of an appeal or its dismissal as such is on the basis of concessions made before this court. The first ground of review contemplated by section 8C (2) also does not exist. Since a petition for review under the extra - ordinary provision can be sustained only if one or other of the grounds mentioned in section 8C (2) exists and since in our opinion none of them exists, this petition for review entails dismissal. It is accordingly dismissed.