

(1988) 11 KL CK 0028
In the High Court Of Kerala
Case No : R.P. No. 150 of 1987

State of Kerala

APPELLANT

Vs

K.M. Thomas

RESPONDENT

Date of Decision : 03-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1, Order 47 Rule 1
Kerala Private Forests (Vesting and Assignment) Act, 1971 — Section 2, 2(1), 3(1), 3(2), 3(3)

Citation : (1988) 11 KL CK 0028

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

Bench : Division Bench

Advocate : M.C. John, Government Pleader, for the Appellant; P.N.K. Achan, K. Vijayan and N.N. Sugunapalan, for the Respondent

Final Decision : Allowed

Judgement

Sivaraman Nair, J.—This is an Application u/s 8C of the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 as amended by Act 36 of 1986, by which the State and the custodian of Vested Forests seek a review of the judgment of this Court in M.F.A. No. 193 of 1979.

2. The Respondent herein had filed an application u/s 8 of Act 26 of 1971 on 31st May 1976 claiming that 43 acres of unsurveyed land in Agali Village, Mannarghat Taluk was cocoa plantation and was therefore not private forests as defined in Act 26 of 1971.

3. The applicant-Respondent had not produced any document along with the application. Even though there was a reference to a registered partition deed 3301/68/SRO Mannarghat and that "clear-felling permit and other documents will be filed later", those documents were filed only on 7th August 1978 (marked as Exts. A-1 to A-4) and on 6th September 1978 (marked as Exts. A-5 to A-9). In their written objections, the State and the Custodian of vested forests contended that the disputed areas were part of unsurveyed forest lands in Vettilachola

malavaram, that they were never cultivated and that there was no cocoa plantation in that area as on 10th May 1971. The applicant examined his son as P.W. 1, a Deputy Tahsildar as P.W. 2 and a retired Registration Official as P.W. 3. Ext. A-1 registration copy of the partition deed, Ext. A-2 clear felling permit, dated 20th August 1970, Ext. A-3 registration certificate issued by the Divisional Forest Officer, Ext. A-4 letter of the Divisional Forest Officer, dated 26th September 1970, Exts. A-5 to A-7 bills for 2,000 plants each, dated 15th September 1970, 20th September 1970 and 28th September 1970 issued by a private nursery in Palai, Ext. A-8 report of P.W. 3, dated 5th February 1972 and Ext. A-9 report sent by P.W. 2 to the Chairman, Taluk Land Board, Mannarghat were marked on the side of the applicant. R.W. 1 the Range Officer concerned was examined on the side of the respondents. The case of the applicant was that the disputed property formed part of item No. 3 in B Schedule of Ext. A-1 registered partition-deed, that Ext. A-2 clear-felling permit was issued in respect of 100 acres out of that property, that the entire area was clear felled within a couple of months after Ext. A-2 permit and that 50 acres were planted with rubber, 7 acres with pepper and the remaining 43 acres with cocoa in September-October, 1970. 50 acres of young rubber and 7 acres of pepper were excluded from the vesting provisions, remaining 43 acres planted with cocoa was wrongly demarcated as vested forests, and therefore that was liable for exclusion. Exts. A-3 and A-4 were produced for evidencing removal of, timber consequent on clear-felling and those operations were concluded by 31st May 1971. Exts. A-5 to A-7 were produced to show that 6,000 cocoa plants were planted in the disputed area in September-October, 1970. Ext. A-8 was produced to show that the time of the inspection conducted by the third Respondent, an authorised valuer under the Estate Duty Act, the disputed area was a young cocoa plantation. Ext. A-9 was produced to show that at the time of inspection of P.W. 2 for purposes of ceiling provisions under the Kerala Land Reforms Act, there were cocoa plants which were aged about 4-5 years in the disputed area. Respondents asserted that there were forest trees in the disputed property and that there were only a few cocoa and coffee plants scattered all over the acres of land. They also maintain that the few cocoa plants in an area where trees were available in profusion could not make it an area principally planted with cocoa.

4. The Forest Tribunal, Manjeri in its order dated 21st February 1979 held that the provisions of the erstwhile M.P.P.F. Act were applicable to the petition scheduled property immediately prior to 10th May 1971. This was done overruling the contentions of the applicant. " The tribunal, however, held that the evidence of P.Ws. 2 and 3 and the reports Exts. A-8 and A-9 indicated that there were cocoa plants in the disputed property on 15th February 1972 at the time of inspection of P.W.3 and there were cocoa plants aged 4-5 years at the time of the inspection conducted by P.W. 2. Relying exclusively on Exts. A-5 to A-7, the Tribunal held that the case of the applicant that the cocoa seedlings had been planted in the whole of the disputed area in September-October, 1970 must be correct. It was on that basis that the Tribunal held, that the land was principally

cultivated with cocoa as on 10th May 1971. Therefore it found that the petition scheduled property, was not a private forest under Act 26 of 1971, and it would not vest , in the State under the said Act.

5. The State filed M.F.A. No. 193 of 1979 against the order of the Forest Tribunal. The appeal was heard by this Court on 2nd January 1985. In the judgment, which did not consider the merits of the appeal in detail, a Division Bench of this Court found that Exts. A-5 to A-7 receipts for the purchase of cocoa seedlings from nurseries on 15th September 1970, 20th September 1970 and 28th September 1970 and the evidence of P. Ws. 2 and 3 justified the finding of the Tribunal that the disputed area was principally planted with cocoa as on 10th May 1971. It was also held, that-

now that the Tribunal has chosen to believe the evidence based on Exts. A-5 to A-7 and the oral evidence of P.Ws. 1 to 3 and there is nothing impossible so far as the planting after the date of the clear felling licence and the dates of Exts. A-5 to A-7 we do not think that a case for interference has been made out.

The appeal was, therefore, dismissed. We find, from the certified copy of the judgment that an application for certified copy of the judgment was filed only on 3rd April 1987 and the same was delivered on. 6th July 1987. The review petition is seen to have been filed on 31st March 1987. Certified copy of the judgment is seen filed on 10th July 1987. The State and the custodian of vested forests seek a review of the judgment of this Court in M.F.A. No. 193 of 1979 u/s 8G(2) of Act 26 of 1971 as amended by Act 36 of 1986. The grounds urged in support of that application are that this Court overlooked the fact that a permission for clear felling private forest will not, by itself, prove completing of felling and actual cultivation, that there was no acceptable evidence of purchase of seedlings, that the seedlings were not shown to have been planted in the disputed property, and that the applicant failed to satisfy the conditions required u/s 3(2) or 3(3) of the Act.

6. A preliminary point was taken by the Respondent viz., the applicant before the Forest Tribunal to the entertainability of the review petition. He submits that according to Section 8C(2) of the Act there are two stages in every review application. The first is the satisfaction of the Government u/s 8C(2) 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. The second stage is when the court considers a review application which was filed when the Government was satisfied about the conditions mentioned above. Counsel submits that it must be evident, that the Government was satisfied about the existence of one or the other of the conditions mentioned in Section 8C(2). It is

his further submission that the court shall exercise the power of review only if it is found that circumstances justifying the exercise of the power of review under Order 47, Rule 1 or other cognate circumstances are present. Further submission of counsel is that the conduct of an Advocate appearing for the State and the Custodian-and much less that of an Additional Advocate General-shall not be called in question in a subsequent application for review filed by the State. Reliance is placed on the decision reported in *State of Kerala v. Ahammadkutty Haji* 1987 (2) KLT 406.

7. The same provision had come up for consideration before this Court on a number of occasions. A Division Bench consisting of one of us (Sivaraman Nair, J.) upheld the validity of Section 8C of the Act in the following terms:

This is an extraordinary case-one of the few which led to the most extraordinary legislation in the legislative history of the world, whereby the Kerala Legislature incorporated Section 8G in the Kerala Private Forests (Vesting and Assignment) Act, 1971 providing for a review of orders passed by the courts and authorities on the basis of wrong concessions made by counsel appearing for the State:

That decision was rendered on 10th April 1987. *V.M. Abraham v. State of Kerala* 1987 (1) KLT 57 (S.N.) dealt with the circumstances attendant upon the enactment of Act 36 of 1986 whereby the Government took power to seek review of judgments rendered by the Tribunal or the High Court to seek review of judgments rendered due to abuse of authority or default in presenting the case of the State as should have been done. In *State and Anr. v. M.M. Thomas* 1987 K.L.J. 298 which was decided on 17th February 1987, the bench consisting of one of us (Sivaraman Nair, J.) held that if the prior appellate judgment decided an issue which did not arise from the pleadings or rested on an assumption" relating to the existence of facts necessary to justify exemption u/s 3(2) of Act. 26 of 1971, the invocation of the power of review would be permissible. In the decision reported in *Bhagavathy Tea Estates Ltd. v. State of Kerala*, 1979 85 KLT 753 Sukumaran, J. dealt with the same provision which preceded Act 36 of 1986. It was observed:

The passages disclose the alarming scale of the failures in various spheres of the implementation of that legislation. If in the above" circumstances, the State felt that it had to save itself from its servants and even from its agents and advisers, the attempt of the Government cannot be viewed as in any way unwholesome or unjust. If despite the availability of massive evidence, none, or substantial portion of it, had not been duly or properly adduced before the Tribunal, or if important aspects had not been highlighted before the deciding agencies, the result would indubitably be a deflection of the course of justice. Even this Court had pointed out such lapses of the governmental agencies, on very many occasions. Enacting a law, in such circumstances, to chock fraudulent deprivation of the State's rights and interests cannot be termed as arbitrary or unjust, on the contrary, it is a necessary piece, of legislation.

The Ordinances only enable the Government to have a further opportunity to seek a decision before a quasi-judicial functionary like the Tribunal or a judicial one like the High Court. No citizen can feel a grievance if the Tribunal or the court is enabled to render its decision with all evidence adduced before it and with all arguments effectively, presented before it. That is the purpose subserved by the Ordinances. The purpose is not unreasonable or arbitrary. It is a perfectly permissible, and perhaps commendable exercise of legislative power.

The earlier decisions in W.A. No. 167 of 1983 1987 (1) KLT 57 which was rendered on 10th April 1987 nor State and Anr. v. M.M. Thomas 1987 K.L.J. 298 which was rendered on 17th February 1987 were referred to or differed from in State of Kerala v. Ahammadkutty Haji, 1987 (2) KLT 406 which was decided on 31st July 1987. 1987 (1) KLT 57 has now been affirmed by the Supreme Court in P.M. Augusthi v. C.F. of Kerala SLP No. 9794-95 of 1987. In a later decision which is reported in G. Thirumulpad v. State of Kerala 1988 (1) KLT 865 , as also in R.P. No. 147/1984 in C.R.P. 2271/82 the same Bench, with one of us (Sivaraman Nair, J.) had occasion to consider the validity and scope of the power of review conferred by Section 8C of Act 26 of 1971 as amended by Act 36 of 1986.

8. In State of Kerala v. Ahammadkutty Haji 1987 (2) KLT 406 (Supra) this Court proceeded on the basis that Section 8C of Act 26 of 1971 as amended by Act 36 of 1986 was valid. In the later decision in G. Thirumulpad v. State of Kerala 1981 (1) KLT 865 (supra), where the validity of that provision was specifically under challenge this Court upheld the same. Both the decisions proceeded on the basis that there were two stages in the process of review:-(1) satisfaction of the Government on the conditions mentioned in Section 8G(2) and (2) consideration by the court of the application for review. The former decision confined such consideration only to the specific provisions of Order 41 Rule 1 of the Code of Civil Procedure. In R.P. No. 147 of 1984 this Court proceeded on the basis that even if the scope of review was confined to Order 41 Rule 1 thereof cognate considerations would be "other sufficient reasons" under the above rule." It was also held, that even on the assumption that Order 47 Rule 1 should strictly apply, the reasons which are analogous to those mentioned in Order 47 Rule 1 also would be available to the Court. In the order in R.P. No. 147 of 1984 in C.R.P. No. 2271 of 1982, we had referred to the decision of the Supreme Court in M.M.B. Catholicos v. M.P. Athanasius AIR 1954 S.C. 526, to find that omission to decide a material issue or decision rendered by a court on a point which was not in issue between the parties should also justify exercise of the power of review under Order 47 Rule 1 of the Code of Civil Procedure. The decision of the Supreme Court referred to by us fully justify the view that even assuming Order 47 Rule 1 is applicable, the High Court is free to exercise its power on cognate considerations.

9. One other important factor which we have to notice is that Sub-section (5) of Section 8C dealing with the power of the High Court to dispose of an application for review excludes the application of any other law. We have already extracted

that provision. It is stated therein that the High Court may, 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, after giving a reasonable opportunity to the parties to be heard either in person or by representative, pass such orders thereon as it may think fit. On the phraseology of the above provision, the validity of which has been specifically upheld by this Court, the Government pleader seems to us to be fully justified in submitting that the trammels or fetters forged by Order 47 Rule 1 shall not strictly apply to the exercise of the power of the High Court to review its own judgments u/s 8C. The wisdom of a provision which indicates that the very extra-ordinary power conferred u/s 8C shall be exercised "notwithstanding any provision contained in any other law" is not a matter for our consideration in these proceedings. There is no challenge against the statute. The power is very widely granted designedly because of the extensive abuse which was highlighted in the decisions in Bhagavathy Tea Estate, 1979 85 KLT 753, V.M. Abraham, 1987(1) KLT 57 (S.N.), M.M. Thomas, 1987 K.L.J.298 and G. Thirumulpad, 1988 (1) KLT 865(supra). In Ahammadkutty Haji's case 1987 (2) KLT 406, the provisions of Section 8C (5) was not noticed. We are therefore, not impressed by the submission that we shall confine ourselves only to the specific grounds mentioned in Order 47 Rule 1 of the CPC in dealing with the application for review. However, we are satisfied that even on the limited grounds as understood in Ahamadkutty Haji's case 1987 (2) KLT 406 (supra) the exercise of the power of review will be justified in the facts and circumstances of this case.

10. This is not to say that the power of review shall be unrestrained. It shall be confined to reasonable limits. The grounds or reasons for exercise of the power shall be similar and cognate and not entirely dissimilar to the considerations under Order 47 Rule 1. 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 seems to us to have been further enlarged. This seems to be the position in view of the specific provisions contained in Section 8C(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. We therefore feel justified to consider the application for review on merits, in the light of the width of the power, as conferred by Sub-section (5) of Section 8C. We should at-the same time bear in mind that we are restrained as we should be by precedents, which delineate the outer limits of the power of review.

11. The Government Pleader submits that many important aspects in the case

could not be properly presented before this Court. Those obvious omissions resulted in this Court being disabled from considering the appeal in its proper perspective. He submits further, that a SLP could not be filed before the Supreme Court because no application for certified copy of the judgment was filed within time. He submits further that there was failure to produce sufficient data and particulars before this Court in appeal. It is on these grounds that the Government Pleader seeks to justify the review petition.

12. We do not think that we can set much store by the objection of the applicants that it is not shown that the Government was satisfied about the conditions mentioned in Section 8C(2) of the Act. The Government itself is the first applicant. It was evidently exercising its power u/s 8C of the Act. Ordinarily we have to assume that the State Government decided to file the review petition on being satisfied about the existence of these conditions. A ritualistic incantation of the statutory formula is not an obligatory requirement to justify the filing of the petition u/s 8C of the Act. We are, therefore, inclined to over-rule the preliminary objection urged by counsel for the applicants.

13. Some of the aspects of this case which require to be noticed seem to us to have been completely omitted from consideration, obviously because such data and particulars were not brought to the notice of this Court. The proceedings started with the application dated 31st May 1976. In column (d) of the application dealing with description of tree growth available in the area, the applicant stated "nil". Answer to column (e) (ii) wooded area was also "nil". In answer to column (g), extent of cultivated area owned by the applicant in other villages, taluks or districts, the applicant stated "nil" in respect of (a) wet-nilam; (b) drygarden; (d) crash crops; and (e) any other category. In column (c) plantation props, he mentioned 30 acres of rubber plantation. In column (h) list of documents in support of the ownership over the land, he mentioned (1) "registered partition deed 3301/68/SRO, Mannarghat and (2) clear felling permit and other documents will be filed later". Grounds for filing the application was stated to be that the "Petitioner was in possession of the petition schedule lands from-by virtue of the lease deed and other documents. He has planted the entire land with cocoa. The forest officials have demarcated the above lands on 15th May 1976 as forest lands. The demarcation is highly wrongful and irregular the properties are cultivated lands even prior to 1970. Therefore the lands are not liable to be vested in Government", According to the details furnished in the Schedule of properties, it was bounded on the eastern and western sides by vested forests arid on the west and north by plantations. He did not produce any document along with the application. The evidence proved each one of the statements contained in the application to be wrong. Ext. A-1 title deed showed item 3 of B Schedule which was allotted to the applicant to contain 449-24 acres of unsurveyed forest lands. Ext. A-8 report of P.W. 3 on which considerable reliance was placed by the Tribunal contained damaging details which were not however, noticed. According to that document, the holding of the applicant consisted of 145 acres of rubber, of which 37-65 acres were 50 years old in

1972, 58 acres had rubber trees aged 6-8 years and 50 acres had pepper, 10 acres had teak, 146-11 acres were forest and 7-5 acres, which were set apart for religious purposes. The total extent of the holding was 326-11 acres. The reason why the Petitioner did not disclose in his application the details of his holdings as disclosed by Ext. A-8 report produced by him is rather mystifying. Ext. A-9 is another document relating to the ceiling return of the Petitioner. The total extent of land showed in that document as owned by him in Mannarghat Taluk of Palghat District was 395-31 acres, inclusive of 146-11 acres of forest lands. The difference between Ext. A-8 and Ext. A-9 is therefore 69-20 acres. The applicant did not make any attempt to reconcile these conflicting statements regarding the extent of land held by him. It is impossible to reconcile these statements with the averments which he made in his application.

14. Another aspect which is of considerable importance is that the case of the applicant as spoken to by his son P.W. 1 was that the applicant obtained Ext. A-2 permission for clearfelling 100 acres out of item 3 in B Schedule, that 57 acres were planted with rubber and pepper and 43 acres were planted with cocoa in September, October, 1970. What he claimed in his application as "any other land belonging to him" was only 30 acres of rubber plantation. Even apart from the 50 acres of new rubber, he had 95 acres of yielding rubber at that time, and 18 acres of pepper inclusive of 9 acres of new pepper as disclosed by Ext. P-8 and P-9 reports. Refusal to disclose these factual details particularly the refusal to mention at least 50 acres of rubber and 7 acres of pepper is rather amazing.

15. Yet another important aspect is that the applicant had stated that the tree growth available in the disputed area was "nil" and there was no wooded area as per the application. In his evidence as P.W. 1, son of the applicant stated that only old trees were removed from the area of 43 acres and the young trees were retained as shade trees for cocoa plantation. This case was diametrically opposite to the recitals contained in the application. This difference had to be explained and none was offered by the applicant, none is forthcoming even now.

16. Ext. A-2 is a clear felling permit. Condition 2 in the permit directed that all trees except casuarina trees should be felled and the entire area should be regenerated with rubber or cocoa. If he wanted to retain some of the trees, what he had, to apply for was a selection felling permit under the M.P.P.F. Act. It is, therefore, not easy to believe the assertion of P.W. 1 that he felled only old trees and retained young trees for shade purposes.

17. Exts. A-3 and A-4 are the property mark registration and the covering letter dated 25th September 1970 and 26th September 1970 respectively, which were communicated by the Range Officer. The period of validity of the property mark registration was to expire on 31st March 1971. This date was subsequent to Exts. A-5 and A-6 bills for purchase of cocoa seedlings from a private nursery in Palai. The specific case of P.W. 1 was that except Ext. A-3, there was no registration mark or timber transit permit obtained by him for registration of felled timber and its transport. He was also categorical that there was no renewal of the permit

later. Transport of timber could have started only subsequent to 26th September 1970. It is ordinarily impossible to conceive that the transport of timber felled from the entire area of 100 acres which would have commenced only by the end of September could have been completed so as to enable plantation of 50 acres with rubber, 7 acres with pepper and 43 acres with cocoa by October or even by the appointed day. Assuming it was so done, it would not have been impossible for the applicant who was a planter to produce his accounts relating to such intense and extensive activities in such an extraordinarily short period of time.

18. The specific case of P.W. 1 was that cocoa was planted principally during September-October 1970. P.W. 2 found in his report Ext. P-9 that cocoa must have been planted in 1971. Apart from stating that cocoa plantations in the 41 acres seemed to be new, P.W. 3, neither in his evidence nor in his report, Ext. A-8, had ventured any opinion about the probable period of plantation. P.W. 2 stated positively that cocoa could have been planted only during rainy season and that period must be June-August or September-October. If one believes the testimony of P.W. 3 that it looked as if cocoa was planted during 1971, such plantation must have been after 10th May 1971 either in June-August or September-October of that year.

19. This Court had placed considerable reliance on Exts. A-5 to A-7 in affirming the order of the Tribunal. Those documents were not proved. The specific case of the present Petitioners, who were Respondents before the Tribunal, was that those documents were procured clandestinely for the purpose of claiming exclusion/exemption from vesting. There was absolutely no reference to any bill for purchase of cocoa seedlings in the application. The only recitals relating to the documents as contained in the application were Exts. A-1 and A-2 clear felling permits, whereas in the general statement it was stated that "other documents will be filed later". Exts. A-5 to A-7 were produced only on 6th September 1978, the date on which P.W. 1 was examined. It was assumed by the Tribunal that since the seedlings were shown to have been purchased pursuant to Exts. A-5 to A-7 in September, it could be presumed that they were planted in September-October, 1970. That was affirmed by this Court for the reason that it would not have been impossible to do so. That assumption that Exts. A-5 to A-7 evidenced genuine transactions could not have been made unless those documents were properly proved. It was not impossible for the applicant to produce his accounts evidencing entries corresponding to Exts. A-5 to A-7. None were produced. Nor was it impossible for him to produce the plantation accounts evidencing the extent of plantation of cocoa in September-October 1970. In spite of the specific question in cross-examination, no such documents were produced or sought to be produced. Agricultural income tax returns and other documents could have shown whether there was any immature area in the plantation of the applicant during the accounting year 1970-71, corresponding to the assessment year 1971-72. This would have supported his case that he had planted the area with cocoa in September-October 1970. He did not produce any. The absence of this very important

document was brought out in the cross-examination of P.W. 1. But these aspects were not adverted to by the Tribunal in its order. Nor were these aspects effectively urged before this Court in appeal. We are therefore of the opinion that there was no basis for the assumption that because 6000 seedlings were purchased under Exts. A-5 to A-7 in September 1970, they must have been planted in September-October 1970 so as to exclude the area as principally planted with cocoa as on 10th May 1971.

20. This Court had observed that "now that the Tribunal has chosen to believe the evidence based on Exts. A-5 to A-7 and the oral evidence of P.Ws. 1 to 3 and there is nothing impossible so far as the planting after the date of the clear felling licence and the dates of Exts. A-5 to A-7 we do not think that a case for interference has been made out". We have referred to the irreconcilable inconsistencies in the evidence of P.W. 1, recitals in the application and Exts. A-8 and A-9. There are such irreconcilables in the evidence of P.Ws. 2 and 3 also. These were not high-lighted in appeal before this Court.

21. Another important aspect on which the assumption was made was that it was not impossible to complete the planting of 100 acres clear-felled under Ext. A-2 after the dates of Exts. A-5 to A-7. It was not brought to the notice of this Court, that Exts. A-3 and A-4 conclusively indicated that the only property-mark registration enabling registration of timber and removal of forest produce was issued only on 26th September 1970 and the transport of felled timber could have commenced only by the end of September 1970. It was impossible, except when positive evidence in that regard was produced, that plantation was completed in the entire area of 100 acres including 43 acres under dispute with rubber, pepper and cocoa within a month's time.

22. P.W. 1 admitted that there were forest trees standing in the area. His case was that they were retained as shade trees. The State has filed an application (with copy to the Respondents) enclosing an enumeration list to the effect that there are as many as 1983 forest trees in this area even now. According to the enumeration list produced along with C.M.P. No. 24937 of 1988 the girth of such trees varied from 15 cms. to 460 cms., and the height from 3-15 metres. On a further verification, the Divisional Forest Officer submitted a report dated 9th October 1988 after measuring the tree growth again in two sample blocks. In plot No. 1 consisting of one chain-square,- there were 13 trees with height varying from 8-35 metres, and girth of 60 to 380 cms. In the second plot of the same area, there were 10 trees of height varying from 20-35 metres and girth varying from 75 to 115 cms. It is true that a further cross- verification with notice to the applicants was not conducted. We are therefore not relying upon the recitals contained in the additional documents which are produced before us now.

23. The admitted case as spoken to by P.W. 1 was that there were forest trees in the disputed plot and that they were retained as shade trees though he had scrupulously avoided any mention of any tree growth in the area. That mis-

statement was made obviously to make out that the cocoa was planted in the area which was clear-felled under Ext, A-2 permit. If, as a matter of fact, the disputed area was planted with cocoa prior to 10th May 1971 the existence of forest trees can be explained only on the assumption that the area was not clear-felled nor was it planted prior to the appointed day. P.W. 1 improved upon the case in the application, evidently since he apprehended that the statement about no tree growth in the area would be proved false, if the area was inspected. In the light of the above facts we have to hold, that the applicant was not able to prove that he was entitled to exclusion of the 43 acres from the provisions of the Vesting Act 26 of 1971, for the reason that the area was principally planted with cocoa on or prior to the appointed day.

24. We therefore hold that the judgment of this Court dated 2nd January 1985 discloses errors apparent on the face of the record esulting from omission to consider material aspects of the case as emerged from the pleadings and evidence available before the Tribunal. The irreconcilable differences between the recitals contained in the application u/s 8 of the Act, the evidence of P.W. 1 and the reports Exts. P-8 and P-9, the impossibility of completing the plantation of 100 acres clear-felled under Ext. A-2 after removal of felled timber and other forest produce within one month after receipt of Exts. P-3 and P-4, the fact that Exts. A-5 to A-7 were not duly proved and that the production of those bills did not by itself justify the assumption that the disputed area was planted before the appointed day were relevant data and material particulars, which ought to have been, but were not brought to the notice of this Court when it considered the appeal. The fact that the Appellant had deliberately kept back many material particulars regarding the extent of other lands held by him, the non-production of accounts for planting alleged to have been made in September-October 1970 and the absence of any explanation for these lapses were important matters which were not adverted to on the prior occasion. These aspects fully justify the invocation of the power of this Court u/s 8C(5) of Act 26 of 1971 to review the prior judgment. We are also of the opinion even within the confines of the limited power under Order XLVII Rule 1 of the Code of Civil Procedure, these aspects amount to error apparent on the face of the record, or at least "other sufficient reason" analogous thereto which require this Court to review the judgment dated 2nd January 1985.

25. We have dealt with the entire oral and documentary evidence which the Tribunal had before it in regard to the application which the Respondent herein had filed before the Tribunal u/s 8 of Act 26 of 1971. We have given our detailed reasons why, in view of the facts emerging from the pleadings and evidence, but which were not adverted to either by the Tribunal in its order dated 21st February 1979 or by this Court in the appellate judgment dated 2nd January 1985, the claim of the Appellant that the disputed area consisting of 43 acres of forest land was principally cultivated with cocoa plants should be rejected. We should also add that the mere fact that an applicant had planted cocoa in a forest area would. not be sufficient to justify its exclusion from the definition of private

forest u/s 2(f)(1)(i) or (ii) of Act 26 of 1971. It should be shown that the area was "principally planted" with cocoa. The number of cocoa plants as spoken to by P.Ws. 1 to 3 and disclosed by Exts. P-8 and P-9 did not justify a finding that the area was "principally cultivated with cocoa". On the other hand, the evidence of P.W. 1 established that there were a lot of forest trees- except the old trees which were felled under Ext. P-2 permit in the disputed land even as on 10th May 1971, The only finding which could have been entered in the light of these facts was that the land continued to be private forest on the appointed day and had vested in the State u/s 3(1) of Act 26 of 1971. Since no claim for exemption u/s 3(2) or 3(3) of the Act were made or could be sustained, the application could only have been rejected.

26. In the result, we allow this review petition as also M.F.A. 193 of 1979. The order of the Forest Tribunal, Manjeri in O.A. No. 585 of 1976 is set aside and that application is hereby dismissed. The Respondent will pay the costs of the Appellants including advocate fee of Rs. 500.