

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MR.JUSTICE GOPINATH P.
&
THE HONOURABLE MR.JUSTICE P.G.AJITHKUMAR
&
THE HONOURABLE MRS.JUSTICE SHOBA ANNAMMA EAPEN
&
THE HONOURABLE MR.JUSTICE S.MANU

Thursday, the 17th day of October 2024 / 25th Aswina, 1946

MFA (FOREST) NO. 1 OF 2015

OA 1137/1974 OF FOREST TRIBUNAL, PALAKKAD.

APPELLANTS / 3RD PARTIES TO THE PROCEEDINGS:

1. MOIDUNNI, AGED 55, S/O.USSANKUTY, KALAKUNNATH HOUSE, IRUMBALASSERY DESOM, OTTAPALAM TALUK.
2. HAMSA, S/O.USSANKUTY, KALAKUNNATH HOUSE, IRUMBALASSERY DESOM, OTTAPALAM TALUK.

BY ADV. G.SREEKUMAR (CHELUR)

RESPONDENTS / APPLICANTS AND THE RESPONDENTS BEFORE THE TRIBUNAL:

1. THE STATE OF KERALA, REP.BY THE CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM-695001.
2. CUSOTIDAN EX OFFICIO SPECIAL SECRETARY AGRICULTURE, FOREST SPECIAL DEPARTMENT-695001.
3. MOIDEEN(DIED) S/O.MAMMUTTY, AYYAPPANTHARA, CHALAVARA AMSOM-DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-678001
4. NABEESA(DIED) W/O.MOIDEEN, AYYAPPANTHARA, CHALAVARA AMSOM-DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-678001.
5. ADDL.R5. MUHAMMED @ VAPPUTTY, S/O.MOIDEEN, AYYAPPANTHARA HOUSE, CHALAVARA AMSOM- DESOM, OTTAPALAM TALUK, PALAKKAD DISTRICT-679505.
6. ADDL.R6. SAIDALAVI, S/O.MOIDEEN, AYYAPPANTHARA HOUSE, VANIYAMKULAM.P.O., PALAKKAD DISTRICT-679522.
7. ADDL.R7. ABDUL SALEEM, S/O.MOIDEEN, AYYAPPANTHARA HOUSE, VANIYAMKULAM.P.O., PALAKKAD DISTRICT-679522. (THE RESPONDENTS 5 TO 7 ARE LEGAL REPRESENTATIVES OF THE DECEASED 4TH RESPONDENT ARE IMPLEADED AS ADDITIONAL RESPONDENTS 5 TO 7, AS PER ORDER DATED 02.02.2023 IN IA 4036/2015 IN MFA 1/2016.)

BY SPECIAL GOVT.PLEADER FOR R1 & R2, M/S. R.SREEHARI
and P.B.KRISHNAN(SR.) FOR R5 TO R7.

This MFA (Forest) having come up for orders on 17.10.2024 along with MFA (FOREST) 168/2011, the Court on the same day passed the following:

P.T.O.

‘C.R’

**A.MUHAMED MUSTAQUE, J.,
GOPINATH P., J.,
P.G. AJITHKUMAR, J.,
SHOBA ANNAMMA EAPEN, J.
&
S. MANU, J.**

**M.F.A (Forest) No. 168 OF 2011
&
M.F.A (Forest) No.1 OF 2015**

DATED THIS THE 17th DAY OF OCTOBER, 2024

ORDER

Gopinath P., J.

These matters have been referred and placed before the Larger Bench on account of a common order dated 01-08-2024 in M.F.A. (Forest) Nos.168/2011 and 1/2015 by a Full Bench of this Court. The reference was necessitated on account of the fact that a Full Bench of this Court in ***Pankajakshy Amma v. Custodian of Vested Forests; 1995 (1) KLT 358 (FB)*** appears to have taken the view, on a consideration of the provisions contained in Section 8B of the Kerala Private Forests (Vesting and Assignment) Act, 1971 (hereinafter referred to as ‘the 1971 Act’), that the power of review

conferred on the Tribunal by virtue of Section 8B(3) of the 1971 Act is a provision independent of Section 8B(1) and the grounds for review under Section 8B(3) of the 1971 Act are not circumscribed or controlled by the grounds mentioned in Section 8B(1) of the 1971 Act. A Division Bench of this Court in ***Ibrahim v. Custodian of Vested Forests; 2000 (3) KLT 812***, however, took the view that the decision of the Full Bench in ***Pankajakshy Amma (supra)*** only meant that if the grounds mentioned in Section 8B(1) of the 1971 Act were existing and once it is found that a review is necessary upon grounds mentioned in that provision, the Tribunal could thereafter conduct a fresh hearing of the matter and take into account every aspect. In other words, at such a hearing (after review) it would be open to the Tribunal to consider all matters as if the application before the Tribunal had been restored for fresh adjudication. In ***Ibrahim (supra)*** the Division Bench drew sustenance for this view from the judgments of the Supreme Court in ***Sri Bagawati Tea Estates Ltd. and another v. Govt. of India and others, (1995) 2 SCC 452*** and ***M.M. Thomas v. State of Kerala and another; (2000) 1 SCC 666***

2. The issue, thereafter, again arose for consideration before a

Division Bench of this Court in ***Thankappan v. State of Kerala; 2002 (3) KLT 275***. In ***Thankappan (supra)***, the Division Bench again considered the law laid down in ***Pankajakshy Amma (supra)*** and held that the decision of the Supreme Court in ***Bagawati Tea Estates (supra)*** did not in any way dilute the principle laid down in ***Pankajakshy Amma (supra)*** and held that the view in ***Ibrahim (supra)*** goes contrary to the law laid down in ***Pankajakshy Amma (supra)***.

3. When these Miscellaneous First Appeals were listed before a Division Bench of this Court, after referring to the Full Bench decision in ***Pankajakshy Amma (supra)***, and to the decisions in ***Ibrahim (supra)*** and ***Thankappan (supra)***, the Division Bench, *prima facie*, held that the proposition in ***Pankajakshy Amma (supra)*** did not lay down the correct law and the matter requires consideration by a Full Bench. It was accordingly that the matter came up before the Full Bench. The Full Bench through the order dated 01-08-2024 already referred to above also *prima facie* took the view that the power of review under Section 8B(3) was not independent of the grounds in Section 8B(1). In other words, the view taken was that it is only when the grounds

mentioned in Section 8B(1) are available, can an application for review be maintained before the Tribunal. The referring bench, therefore, clearly doubted the law laid down in ***Pankajakshy Amma (supra)***. It is thus that this question falls for our consideration.

4. We have heard Sri. P. B. Krishnan, the learned Senior Counsel on the instructions of Sri. R. Sreehari and Sri. G. Sreekumar (Chelur) in M.F.A(Forest)No.1/2015, Sri. Deepak Bhavadasan in M.F.A (Forest) No.168/2011 and Sri. Nagaraj Narayanan, the learned Special Government Pleader (Forest) appearing for the Forest Department. While the appellants canvass for the position that the power of review under Section 8B(3) of the 1971 Act cannot be exercised independent of the grounds set out in Section 8B(1), the learned Special Government Pleader (Forest) attempts to establish that the view taken by the Full Bench in ***Pankajakshy Amma (supra)*** is the correct view and Section 8B(3) should be seen as conferring an independent power of review *dehors* the provisions contained in Section 8B(1) of the 1971 Act.

5. We have considered the submissions made across the bar and analysed the statutory provisions. We have also gone through the

decisions cited before us.

6. Sections 8B, 8C and 8D of the 1971 Act were inserted by Act 36 of 1986 and came into force with effect from 19-11-1983. For the purposes of answering the question arising for consideration in this case, we may refer to the provisions of Sections 8B and 8C. While the provisions of Section 8B deal with the power of the Custodian to apply for review of the decisions of the Tribunal, Section 8C deals with the power of the Government to apply for review of the decisions of the Tribunal and that of the High Court in an appeal from the order of the Tribunal under Section 8A or in any proceeding before the High Court, that relates to any land which is a 'private forest'. The provisions of Section 8D deal with the stay of proceedings which are liable to be reviewed or appealed against in terms of the provisions contained in Sections 8B and 8C and do not concern us in answering the question of law before the Larger Bench. Section 8B of the 1971 Act reads thus:-

“8B. 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

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 under Section 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 its decision and pass such orders as it may think fit.”

Section 8C of the 1971 Act reads thus:-

“8C. Power of Government to file appeal or application for review in certain cases.-

(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 Government, if they are satisfied that any decision of the Tribunal under Section 8 has been made on the basis of concessions made before the Tribunal under Section 8 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, 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, appeal against such decision to the High Court.

(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 under Section 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.

(3) 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 judgment or order [other than order referred to in sub-

section (2)] passed by the High Court in any proceeding, relates to any land which is a private forest and that such judgment or order has been passed due to suppression or misrepresentation of facts or due to the failure to produce relevant data or other particulars or that an appeal against such judgment or order could not be filed by reason of the delay in applying for and obtaining a certified copy of such judgment or 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 judgment or order.

- (4) An appeal under sub-section (1) or an application under sub-section (2) or sub-section (3), shall be in the prescribed form and shall be verified in the prescribed manner.*
- (5) On receipt of an appeal under sub-section (1) or an application under sub-section (2) or sub-section (3), 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.”

Unaided by authority, our reading of the provisions contained in Sections 8B and 8C of the 1971 Act, suggest to us that the provisions are those clearly incorporated to deal with specific situations which are set out in the provisions themselves. We are also of the view that though the word 'review' is used both in Sections 8B and 8C, the same is not to be confused with a review as contemplated by the provisions of Order XLVII Rule 1, Code of Civil Procedure or any inherent power of review vested in the High Court as a Court of record and as a Superior Court of unlimited jurisdiction. Sections 8B and 8C appear to us to be provisions enabling the recall of an order or judgment that has been rendered on the basis of (i) concessions made before the Tribunal/High Court without the authority in writing of the Custodian or the Government; (ii) due to the failure to produce relevant data or other particulars before the Tribunal/Court and (iii) when an appeal against the decision sought to be reviewed could not be filed by reason of delay in applying for and obtaining a certified copy of the order or judgment. The provisions of sub-section (3) of Section 8B do not in our view indicate that the Tribunal has any power of review *dehors* the grounds set out in sub-section (1) of

Section 8B. There is sufficient indication in the wordings of Section 8B (as also in Section 8C) that the provisions were incorporated to deal with specific instances of fraud or collusion between the claimant and officials of the Forest Department. The fact that the provisions were restricted for the period between the date of coming into force of the Kerala Private Forests (Vesting and Assignment) Amendment Act, 1986 and ending on 31st March 1987 also indicate that the legislature had incorporated these provisions in order to deal with specific situations where a decision of the Tribunal or the High Court was obtained by a claimant on account of a concession made before the Tribunal or the High Court without the authority in writing of the Custodian or the Government or on account of failure to produce relevant data and other particulars or on account of the fact that an appeal could not be filed against the order/judgment sought to be reviewed on account of failure to apply for and obtain a certified copy of the order or judgment on time, as the case may be.

7. The judgment of the Full Bench in ***Pankajakshy Amma*** (*supra*), in our view found, and correctly so, that Section 8B gives power to the Custodian to apply for a review if he is satisfied that the decision of the Tribunal has been made on the basis of concessions without the

authority in writing of the Custodian or the Government or due to failure to produce the relevant data and other particulars or that an appeal against such decision could not be filed by reason of delay in applying for and obtaining a certified copy of the order. It also declared the correct position in law when it held that if any of the conditions in sub-section (1) of Section 8B were satisfied, the Tribunal may review its earlier decision and then pass orders considering the merits of the matter as if it was taking a decision in the first instance. In other words, the Tribunal could, upon being satisfied that one of the three grounds for review mentioned in Section 8B(1) existed, recall its earlier order and pass such orders as it thinks fit. In our view, recalling an order automatically necessitates a re-hearing and re-adjudication of the entire subject matter and the dispute no longer remains restricted to any ground in Section 8B(1). This is also clear from the fact that the provisions of Section 8B(1) and analogous provisions in Section 8C also contemplate the filing of an application for review where there has been a delay in filing an application for a certified copy as a result of which the decisions could not be appealed against in time. The Full Bench also declared the correct position in law when it held that on a plain reading of Section 8B, the satisfaction of any one of

three grounds set out in Section 8B(1) has to be established as a condition precedent for the Custodian to make an application for review. The Full Bench, however, went wrong in declaring that 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*” and holding further that “*To restrict the power of review only to such of the three grounds for which the custodian has to be satisfied will be restricting the scope of review by the Tribunal.*” The Full Bench in ***Pankajakshy Amma*** (*supra*) also went wrong in holding that the “*power of review under Section 8B(3) is not restricted or controlled by Section 8B(1) of the Act*”.

8. The analysis of the law laid down by the Full Bench in ***Pankajakshy Amma*** (*supra*) by the Division Bench in ***Ibrahim*** (*supra*) also taking note of the law laid down by the Supreme Court in ***Bagawati Tea Estates*** (*supra*) appears to us to be the correct interpretation to be placed on the provisions of Section 8B. Thus we are of the firm opinion that the view taken by the Division Bench in ***Thankappan*** (*supra*) does not lay down the correct law. We believe that we are fortified in taking this view also on account of the judgment of

the Supreme Court in ***M.M Thomas*** (*supra*). In that case, the provision in question was Section 8C(2) of the 1971 Act. That provision dealt with the right of the Government to seek a review of a judgment of this Court. The Supreme Court held that the High Court being a Court of record and a Superior Court of unlimited jurisdiction will have the power to review its judgment *dehors* the provisions of Section 8C(2). It was held:-

“14. The High Court as a court of record, as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual memorial and testimony. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. The High Court, as a court of record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regard is plenary. In Naresh Shridhar Mirajkar v. State of Maharashtra [AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a court of plenary jurisdiction being a court of record.”

However, the following observations in *M.M Thomas (supra)* in our view indicate that the power of review conferred on the Tribunal must necessarily be restricted and confined to the express grounds on which a review is permitted. The pertinent observations are:-

“8. A Division Bench of the High Court of Kerala in State of Kerala v. Subramonian Namboodiri [(1992) 2 KLT 300 (DB)] has taken the view that a remedy of review under the sub-section is not available merely because the State feels that the decision is wrong on the merits:

“Section 8-C(2) envisages a review only if the decision of this Court had been made on the basis of a concession made before it 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 the decision.”

9-11.....

12. *It is true that the application for review did not mention that there was any concession made by the Government Counsel. Hence there is force in the contention that review could not be made on that premise.*

So far as the Forest Tribunal is concerned its power of review can be traced to Section 8-C. Unless the law has conferred power of review the inferior courts and tribunals cannot exercise any such power of review. So the Forest Tribunal can exercise power of review in conformity with Section 8-C of the Act.”

In ***Bagawati Tea Estates*** (*supra*), the Supreme Court, on consideration of the provisions of Section 8C(2) of the 1971 Act held:-

“17. A reading of Section 8-C(3) shows that the High Court can review its order on any of the following three grounds:

(1) that such judgment or order has been passed due to suppression or misrepresentation of facts;

(2) that such judgment or order has been passed due to the failure to produce relevant data or other particulars;
or

(3) that an appeal against such judgment or order could not be filed by reason of the delay in applying for or obtaining a certified copy of such judgment or order.

The review petition filed by the State was based upon the second ground, viz., failure of the State to produce relevant data or other particulars, a fact specifically noted in the very first paragraph of the impugned order. The contention urged on behalf of the Government

Pleader before the learned Judge was that it was not brought to the notice of the High Court that prior to the execution of Exh. A-5 in 1963, the sanction of the District Collector as required under Section 3 of the Madras Preservation of Private Forests Act had not been obtained. The learned Judge took note of the fact that this contention was urged before the Division Bench when it heard the appeal and had rejected it. Even so the learned Judge observed, after noticing Section 3 of the Madras Act, that according to the said provision any alienation without the previous sanction of the District Collector is null and void and that the said circumstance raises several questions for consideration, viz., whether the agreement of lease amounts to alienation within the meaning of Section 3 of the Madras Act and if so whether it was entered into with the previous sanction of the Collector and further whether such alienation without such previous permission can constitute a foundation for excluding the land from the purview of the Kerala Act and certain other questions. What is of relevance is that the learned Judge did not say or find that the order of the High Court was made, or vitiated, due to the failure to produce relevant data or other particulars. Indeed, no such data or particulars were placed before the Court by the State in the review petition. On the same material, which was on record in the appeal, the impugned order

*has been made. We are of the opinion that the words “due to failure to produce relevant data or other particulars” mean what they say. It must be a failure to produce relevant data or particulars; it cannot mean a mere change of opinion on the same material or on the same evidence. We are, therefore, of the opinion that the ground on which the review petition was filed was not made out and hence the order dated 3-8-1983 could not have been reviewed and set aside. It is true that under the impugned order the learned Judge has merely restored the appeal to file after setting aside the order dated 3-8-1983, which meant that appeal is yet to be heard, but, in our opinion, the very setting aside of the order dated 3-8-1983 **was not called for until and unless one or the other ground specified by statute is made out.**”*
(Emphasis is supplied)

Thus, the interpretation of the law by the Division Bench, in ***Ibrahim*** (*supra*) relying on ***Bagawati Tea Estates*** (*supra*) lays down the correct law.

9. As already noticed, the provisions of Section 8C of the 1971 Act also contain provisions analogous to the provisions in Section 8B and confer power on the Government to apply for a review of the decision of the Tribunal or the judgment of this Court on the existence of the

grounds mentioned in Sections 8C (1), (2) and (3). Since the grounds set out in Section 8B(1) and Sections 8C (1), (2) and (3) of the 1971 Act are analogous we proceed to answer the reference also with reference to the provisions of Sections 8C (1), (2) and (3) of the 1971 Act. In the light of the above, we answer the reference in the following manner:-

- (1) The judgment of the Full Bench in ***Pankajakshy Amma*** (*supra*) does not lay down the correct law to the extent it holds that the power of review under Section 8B(3) is not restricted or controlled by Section 8B(1) of the 1971 Act and to the extent it holds that a review under Section 8B of the 1971 Act could be maintained *dehors* the grounds set out in Section 8B(1) of the 1971 Act;
- (2) The provisions of sub-section (3) of Section 8B are not intended to enlarge or permit a review on grounds other than those mentioned in Section 8B(1) of the 1971 Act;
- (3) Usage of the word 'review' in Sections 8B and 8C of the 1971 Act should not be confused with a power to review as is generally understood in the context of Order XLVII Rule 1 of the Code of Civil Procedure. These provisions are in effect provisions

enabling recall of an order/judgment rendered by the Tribunal or the High Court (i) on account of concessions made before the Tribunal/High Court without the authority in writing of the Custodian or the Government; (ii) due to the failure to produce relevant data or other particulars before the Tribunal/Court and (iii) when an appeal against the decision sought to be reviewed could not be filed by reason of delay in applying for and obtaining a certified copy of the order or judgment;

- (4) The Review of an order/judgment under Sections 8B and 8C of the 1971 Act automatically necessitates a re-hearing and re-adjudication of the entire subject matter and the dispute no longer remains restricted to any ground in Section 8B(1) or analogous provisions in Sections 8C(1), (2) and (3) of the 1971 Act;
- (5) The Tribunal has no inherent power of review and the authority of the Tribunal to review its orders will have to be traced to the provisions permitting review. The High Court being a Court of record and being a Superior Court of unlimited jurisdiction will, however, have an inherent power of review even *dehors* the

provisions of the statute.

The registry to place the matters for disposal in accordance with the roster.

sd/-

A. MUHAMED MUSTAQUE
Judge

sd/-

GOPINATH P.
Judge

sd/-

P.G. AJITHKUMAR
Judge



sd/-

SHOBA ANNAMMA EAPEN
Judge

sd/-

S. MANU
Judge

acd/AMG