Rama Verma Bharathan Thampuran vs State Of Kerala And Ors on 30 July, 1979

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Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, D.A. Desai, A.D. Koshal

PETITIONER:
RAMA VERMA BHARATHAN THAMPURAN

Vs.

RESPONDENT:
STATE OF KERALA AND ORS.

DATE OF JUDGMENT30/07/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
DESAI, D.A.
KOSHAL, A.D.

CITATION:
1979 AIR 1918 1980 SCR (2) 136
1979 SCC (4) 782

ACT:
Valiamma Thampuram Kovilakam Estate and the Palace (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Act, 1978 (Act 15 of 1978), constitutional validity of.

HEADNOTE:
The Maharaja of Cochin, reigned and ruled over a pretty State, Cochin, which is now an integral part of the Kerala State. The Travancore-Cochin State came into being on July 1, 1949. Two days before this constitutional merger, the Maharaja of Cochin issued a Proclamation to provide for the impartibility, administration and preservation of the Royal Estate and the Palace Fund through a Five-man Board of Trustees. A small Process of family legislation on the

Cochin Palace followed the political transformation of the State. The first was the Valiamma Thampuram Kovilakam Estate and the Palace Fund (Partition) Act, 1961 (Act 16 of 1961), the primary purpose of which was to undo the impartibility of the Royal Estate, as declared by the Proclamation of 1949. Sections 4 and 5 of the Act prescribed the shares of the members, the mode of division and the machinery for partition under these provisions, on a majority of the major members of the royal family expressing their wish to be divided, the Maharaja would consider whether it was in the interest of the family to partition the estate among the members and, if he did, direct the Board of Trustees to proceed with the partition under his supervision and control. Each member including en ventra sa mere, was eligible for a single share on an equal basis. The Board nominated under the earlier Proclamation was continued but its responsibilities were broadened. The privileges of the Maharaja were preserved as his personal rights but vis-a-vis family assets feudal "primogeniture" fell to modern egalite, within limits. As a result of the 26th Constitution Amendment Act of 1971 which extinguished all royal privileges, privy purses and other dignities of the erstwhile rulers of the Indian States, the Cochin Maharaja stepped down to the level of the Karta of a Joint Hindu Family. The Marummakkattayam system which ensured impartibility and management by the senior most member had lost its functional value and virtually vanished from the Kerala coast with the passing of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976). Despite this revolutionary change, the Cochin royal family maintained its former status as Marummakkattayam undivided coparcenary since it was governed by special legislation which remained unrepealed. Therefore, the Kerala Legislation enacted the Valiamma Thampuram Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Act, 1978 (Act 15 of 1978). Before the High Court and in the special leave petition, the vires of the Amending Act omitting sections 4 and 5 from the Principal Act 16/1961 was challenged as offending Articles 14 and 19 of the Constitution.

Dismissing the special leave petition, the Court,

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HELD: The public policy behind Section 7 of the Valiamma Thampuram Kovilakam Estate and the Palace Fund (Partition) Act, 1961, excluding civil court jurisdiction is not merely the special situation of the former royal family but the virtual impossibility within a life-time of division by metes and bounds and allotment of shares to the 800 odd members, most of whom are real royalties in rags, homeless and hungry, seeking to survive by the small pieces from the large cake if ever it will be sliced and distributed. [141A-B]

Civil litigation for partition is the surest punishment to the tattered 'princelings' by pauperizing them through the justice process and giving them stones instead of bread in the end, if the end would arrive at all. The compulsive pragmatics of distributive justice elicited legislative compassion for this uniquely numerous crowd of pauperised patricians by exclusion of civil courts jurisdiction. The pathology of protracted, exotic processual legalistic needs comprehensive renovation if the Justice System is to survive but the legislature salvaged the largest royal family with the littlest individual resources without waiting for the remote undertaking to overhaul Processual Justice to the People. Sociology is the mother of law, lest law in the books should be bastardized by the law of life. [141D-F]

2. Our constitutional order is sensibly and sensitively allergic to arbitrary power and the Supreme Court will unhesitatingly strike down any provision which can be anathematised as creating uncanalised and Neronised power. Section 4 of the Principal Act of 1961 provided for an equal opportunity for every member including those en ventre sa mere. This provision was deleted because its purpose was otherwise served by the substituted Section 3 of Act 16 of 1961 by including a direction to the Board "to effect partition of the Estate and the Palace Fund among all the members entitled to a share".....under Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976)." The effect of the importation of Section 4 of the Abolition Act is to ensure partition per capita among all the members as in the case of a Joint Hindu Family other than an undivided mitakshara Hindu family. What was otiose, namely, Section 4 of Act 16 of 1961, was cut out. This was merely a drafting operation not making any change in the substantive law bearing upon the shares of the members. The contention that by this deletion the members of the Kovilagam had been made over as hostages to the caprice of the Board of Trustees is a frightful error or disingenuous scare. [142-F-G, 143H, 144A-B]

3. Section 5 of the 1961 Act arrogated to the Maharaja of Cochin the power to exclude any properties from the category of partible estate. If most members were to be indigent, the infliction upon such members by the Maharaja's act of exclusion of as many properties as he thought should not be divided would be unjust. Since every member was entitled to an equal share with the Maharaja himself all the properties should be available for partition and this result, which is eminently just, is achieved by the omission of Section 5 from Act 16 of 1961. Therefore, the provision in Act 15 of 1978 omitting Section 5 from the principal Act is a virtue to be commended, not a vice to be condemned. It is eminently reasonable and to contend against it is obviously unreasonable. [143D-F]

4. To blaspheme the Board as an imperium in imperio, a law unto itself and therefore, arbitrary is an egregious

error. The Board was not a new creation
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but an old concoction brought into being by the Ruler thirty years ago, continued by the Kerala Legislature in Act 16 of 1961 and recognised by the latest amendment Act. The Board is a time honoured entity wherein the heads of the four branches are members and is entrusted with the work of division of assets. The Board, being an old institution in plenary management since 1949 and wisely composed of senior-most members of the four branches, is sentimentally and functionally the best instrument to divide and distribute. Indeed Act 16 of 1961 had also entrusted the task of partition to the same Board and no member had during nearly two decades challenged the wisdom of the provision. [144B-D]

Section 3 of the Act 15 of 1978 does not dispense with canons of fair play of natural justice and of quasi-judicial values. A non-curial instrumentality and procedure for partitioning cannot be condemned as discriminatory. The alternative created by the statute is quite reasonable and is a better instrument having regard to the totality of factors. Law is not a cocoon and keeps its eyes wide awake to the realities of life. The legislation in question has taken note of all facts namely; (a) absence of any complaint against their management ever since the Board's creation; (b) sanctification of the Board by the principal Act 16 of 1961 by conferring powers of partitioning the "Kovilagam" properties on this very Board; and does nothing more What was good and valid in 1961 could not become vicious and invalid in 1978. [145 B-D, E]

Quasi-judicial responsibilities are implied by the statute in the Board's function and if the Board breaches these norms and canons, the constitutional remedy under Article 226 comes into play. After all, the Board is a statutory body and not an executive creature. It has been saddled with effecting the rights of parties and is bound to act quasi-judicially. Its deviances are not unreviewable in writ jurisdiction. Sufficient guidelines are built in Section 3 and therefore Section 3 (2) is not unbridled and unconstitutional. [145F-G. 146E]

Maneka Gandhi v. Union of India, [1976] Suppl. S.C.R. 489; M. S. Gill and Anr. v. Union of India, [1978] 2 S.C.R. 621, Organo Chemical Industries and Anr. v. Union of India & Anr., [1980] 1 S.C.R. p. 61 referred to.

5. Absence of appeals does not jettison justice, though often times, appeals are the bane of the justice system, especially because the rich can defeat the poor and the weak can be baulked of their rights indefinitely that way. The Board is a statutory body and when it violates the prescriptions of the law or otherwise acts arbitrarily or malafide, Art. 226 of the Constitution is a corrective. [146 F-G]

6. Act 15 of 1978 has none of the characteristics of class legislation and is on the other hand, an equalising

measure with a pragmatic touch. The Cochin Kovilagam vis-a-vis the Kerala State is sui generis. It has been legislatively dealt with as a special class throughout the history of Kerala and before. Partitioning of the royal family estates on principles similar those applicable to all other Kerala Hindu Families with the only difference that a Board instead of a Civil Court allots shares by metes and bounds, is fully justifiable by the special circumstances. [147 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 5863 of 1979.

From the Judgment and Order dated 15-12-1978 of the Kerala High Court in Original Petition No. 679/78-II.

N. Sudhakaran for the Petitioner.

A. S. Nambiar for the Respondents.

The Order of the Court was delivered by KRISHNA IYER, J. All the parties are represented by counsel and we have heard them in extenso. We therefore proceed to pass a speaking order.

The princely family of Cochin with a proletarian plurality of members has been the cynosure of special legislations, the last of which is Act 15 of 1978, the target of attack in this special leave petition. Articles 14 and 19 of the Constitution have been the ammunation used by the petitioner in the High Court and here to shoot down the legislation as ultra vires.

A brief sketch of the family law of the Cochin royalty may serve to appreciate the scheme of the latest legislation under challenge. The Maharaja of Cochin, reigned and ruled over a pretty princely State, Cochin, which is now an integral part of the Kerala State. When the curtain of history rose to find India free, the constellation of princedoms fused into Independent India's democratic geography. Cochin and Travancore finally fell in with this trend. As a first step they were integrated into the Travancore-Cochin State which came into being on July 1, 1949. Two days before this constitutional merger, the Maharaja of Cochin issued a Proclamation to provide for the impartibility, administration and preservation of the Royal Estate and the Palace Fund through a Board of Trustees. A small process of family legislation on the Cochin Palace followed the political transformation of the State. The Valiamma Thampuram Kovilakam Estate and the palace Fund (Partition) Act, 1961 (Actt 16 of 1961) was the first, the primary purpose of which was to undo the impartibility of the royal estate as declared by the Proclamation of 1949. The shares of the members, the mode of division and the machinery for partition were statutorily prescribed by Sections 4 and 5 of the said Act. The basics of those two sections were that on a majority of the major members of the royal family expressing their wish to be divided, the Maharaja would consider whether it was in the

interest of the family to partition the estate among the members and, if he did, direct the Board of Trustees to proceed with the partition under his supervision and control. Each member, including a child in the womb, was eligible for a single share on an equal basis. The privi-

leges of the Maharaja were preserved as his personal right but vis-a-vis family assets feudal 'Primogeniture' fell to modern egalite, within limits.

The next epochal legislation was the 26th Constitution Amendment Act of December 1971 which extinguished all royal privileges, privy purses and cher dignities of the erstwhile rulers of the Indian States. With the denudation of his royal privileges the Cochin Maharaja stepped down to the level of the karta of a joint Hindu family. The royalty which was once a reality became a mere memory and with the statutory injection of democratic rights into this blue- blooded family, plebeian claims for equal shares began to be voiced, especially because the multifid of little royalties of the Maharaja's matriarchal family lived in lurid poverty, as counsel distressingly described. Indeed, the marummakkattayam system which at one time ensured impartibility and management by the senior-most member had lost its functional value and virtually vanished from the Kerala coast, thanks to the erosive process of legislative individualism. The final blow to this system was delivered by the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976) which fully wiped out the matriarchal pattern of holding and the Hindu undivided family system in the State of Kerala. Despite this revolutionary change, the Cochin royal family maintained its former status as a marummakkattayam undivided coparcenary since it was governed by special legislation which remained unrepealed. This regal matriarchal survival levelled into the main-stream of proprietary life with equal, partible shares for young and old, like the rest of the community when the Kerala legislature enacted the Valiamma Thampuram Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Act, 1978 (Act 15 of 1978) (preceded by Ordinance No. 1 of 1978).

A close-up of this statutory scheme is necessary since it is this legislation which is furiously fusilladed as unconstitutional by counsel for the petitioner. The legislative Proclamation of 1949, if we briefly recapitulate, commended the Constitution by His Highness the Maharaja of a five-man Board of Trustees charged with the plenary task of 'administration, management and conservation' of the 'Estate' and 'Palace Fund'. Act 16 of 1961 brought about a degree of economic democratisation while preserving some of the special legal habiliments of the royal estate. The Board nominated under the earlier Proclamation was continued but its responsibilities were broadened to include partitioning of the Kovilakam assets if a majority of major members-the voice of Palace democracy-asked for divi-

sion and the Maharaja deemed it desirable in the interests of the family. This was a half way house between the impartible old and partible-at-will new. A short provision of great relevance to the issue of constitutionality is to be found in Section 7. The public policy behind this Section excluding civil court jurisdiction is not merely the special situation of the former royal family but the virtual impossibility within a life-time of division by metes and bounds and allotment of shares to the 800 odd members, most of whom are little royalties in rags, homeless and hungry, seeking to survive by the small pieces from the large cake if ever it will be sliced and distributed. The exasperating

longevity of partition litigation, what with the present cantankerous orientation and procedural interminability, preliminary decree, appeals thereon, commissions, objections, revisions, final decrees, and a ruinous crown of other interlocutory proceedings punctuating the suit, followed by inevitable appeals and special leave petitions and the like, baffles the humble and baulks their hope of getting a morsel in their short life span. When this phenomenon-an Indo-Anglican processual bequest-is compounded by the calamitous fact that there are around 800 sharers and a variety of considerable assets to be divided, civil litigation for partition is the surest punishment to the tattered 'princelings' by pauperising them through the justice process and giving them stones instead of bread in the end, if the end would arrive at all ! The compulsive pragmatics of distributive justice elicited legislative compassion for this uniquely numerous crowd of pauperised patricians by exclusion of civil court's jurisdiction. The pathology of protracted, exotic processual legalistics needs comprehensive renovation if the Justice System is to survive but the legislature salvaged the largest royal family with the littlest individual resources without waiting for the remote undertaking to overhaul Processual Justice to the People. Sociology is the mother of law, lest law in the books should be bastardised by the law of life.

A radical measure which swept off the matriarchal system and the Joint family form of estate for Hindus is the next statutory even which needs mention. Kerala Act 30 of 1976 (The Kerala Joint Hindu Family System (Abolition) Act, 1975), abolished at one stroke the Hindu undivided family and converted them into tenancies-in-common with the rule of one member one share. The Cochin 'Kovilagam' was not affected because neither Act 16 of 1961 nor the prior royal proclamation expressly repealed. But the individualist spirit of Act 30 of 1976 invaded the royal family legislatively as there is no basis for proprietary privilege, even as vestiges of past glory, in a democracy charged with social justice. So, Act 15 of 1978 (The Valiamma Thampuram Kovilakam Estate and the Palace Fund (Partition) and the Kerala Joint Hindu Family System (Abolition) Amendment Act, 1978) came to be passed whereby division of the Kovilakam assets was freed from the Maharaja's subjectivism and made a mandate of the statute, in tune with the common trend. The modus operandi to work out partition was the Board and no specific prescription regarding the shares of members is given. No appeal from the partition effected by the Board is specified and Sections 4 and 5 of Act 16 of 1961 are deleted retrospectively.

A quick glance at the provisions gives the impression that the legislature merely equated the right in partition of the junior members of the Kovilakam with that of the commonalty of marumakkattayam families save that instead of the Civil Court the division by metes and bounds was to be carried out by the Board which was already in management and was familiar with the features of the family and the assets. A closer look, in the light of the constitutional challenge which was repelled by the High Court, leaves us cold, hot submissions to burn down the allegedly arbitrary and irresesonable legislation notwithstanding.

Let us dissect the anatomy of the Amending Act of 1978. Be it remembered that Act 16 of 1961 (the principal Act) is not and has never been attacked as ultra vires. If the principal Act was good the search for the invalidatory vice must be confined to the cluster of new clauses.

The principal violation pressed before us by Shri Govindan Nair for the petitioner, who is a senior member of the family, is of Art. 14 and the customary contention, more easily waged than established, is that arbitrary, unguided, naked and tyrannical power is conferred on the Board and therefore the whole Act is bad because the central piece of the statutory scheme is this machinery. True, our constitutional order is sensibly and sensitively allergic to arbitrary power and we have no hesitation in striking down any provision which can be anathematised as creating uncanalised and Neronised Power. The very creation of the Board was challenged as violative of Art. 14 since the jurisdiction of the Civil Court is the common forum with other judicial remedies, appellate and revisional, available for the aggrieved party. While the Board is given plenary power to divide and distribute with validity being conferred on such partition the grievance is that there are no appeals and revisions and the arbitrament of the Board even if it is arbitrary becomes final. This is castigated as a caprice of the legislature. More than all, the very singling out of the ruler's family, populous though it be, is anathematised as discriminatory. Incidentally, the powers of the Board are charged as unreasonable since there is no provision to give a hearing to the affected parties in the process of adjudication and the whole process may well be the deliberations of a secret campaign. These violent vices imputed to the statute will certainly invalidate the Act 15 of 1978, if there were some substance therein. Even an imaginative exercise, if informed by realism, discovers no such infirmity.

Let us clear the confusion caused by the omission of Sections 4 and 5 of the principal Act. Shri Govindan Nair for the petitioners relied on this omission to contend that the wholesome provisions of sections 4 and 5 of the Principal Act of 1961 have been waywardly withdrawn leaving it to the Board to award such shares as they fancied to the various members. This submission proceeds on a simple misconception. Section 4 provides for an equal share for every member including a child in the womb and Section 5 arrogates to the Maharaja of Cochin the power to exclude any properties from the category of partible estate. No democrat will shed a tear if Section 5 were deleted. The members, as Shri Govindan Nair himself urged, were mostly indigent. If that were so, the infliction upon such members by the Maharaja's act of exclusion of as many properties as he thought should not be divided would be unjust. Since every member was entitled to an equal share with the Maharaja himself all the properties should be available for partition and this result, which is eminently just, is achieved by the omission of Section 5 from Act 16 of 1961. Therefore, the provision in Act 15 of 1978 omitting Section 5 from the principal Act is a virtue to be commended, not a vice to be condemned. It is eminently reasonable and to contend against it is obviously unreasonable.

A different criticism has been made regarding the deletion of Section 4 by Shri Govindan Nair; but it is equally mis-conceived, if we may say so. Section 4 of Act 16 of 1961 provided for the share of members including those en ventre sa mere. This provision was deleted because its purpose was otherwise served by the substituted Section 3 of Act 16 of 1961 by including a direction to the Board "to effect partition of the Estate and the Palace Fund among all the members entitled to a share. . . under Section 4 of the Kerala Joint Hindu Family System (Abolition) Act, 1975 (Act 30 of 1976)." The effect of the importation of Section 4 of the Abolition Act is to ensure partition per capita among all the members as in the case of a Joint Hindu Family other than an undivided Mitakshara Hindu family.

What was otiose, namely, Section 4 of Act 16 of 1961, was cut out. This was merely a drafting operation not making any change in the substantive law bearing upon the shares of the members. The contention that by this deletion the members of the Kovilagam had been made over as hostages to the caprice of the Board of Trustees is a frightful error or disingenuous scare.

In the course of his submissions, counsel had a dig at the Board, which, according to him, was an imperium in imperio, a law unto itself and, therefore, arbitrary. This again is an egregious error. The Board was not a new creation but an old concoction. Thirty years ago the Ruler brought it into being. Since then, the Kerala legislature, in Act 16 of 1961, continued it and the latest legislation now denounced before us recognised this time-honoured entity wherein the heads of the four branches were members and entrusted it with the work of division of assets. The Board, being an old institution in plenary management since 1949 and wisely composed of the seniormost members of the four branches, is sentimentally and functionally the best instrument to divide and distribute. Indeed Act 16 of 1961 had also entrusted the task of partition to the same Board and no member had during nearly two decades challenged the wisdom of the provision. We see no legal ground to blaspheme this Board.

The greater grievance of counsel about the Board was something else. He contended that the Board under Section 3 (2) was empowered to effect the partition of the Estate and the Palace Fund "and the partition so effected shall be valid...." From this the criticism was spun out that the Board was likely to act in any manner it pleased, sell the properties at any price, distribute the assets at its sweet will or whim and thus reduce the partition of Kovilagam properties to a mock exercise by an unchallengable Board. He contrasted this grim picture with the advantageous alternative of a civil suit where the shares were fixed according to law, the properties were valued by a Commissioner, objections to the report of the Commissioner were considered by the Court and a decree, preliminary or final, was subject to appeal and further appeal. The judicial process was a great guarantee of the rights of parties which was unavailable before the statutorily immunised and potentially eccentric Board of Trustees. We remained unmoved by this sombre picturisation made up of illusory apprehensions. We have earlier pointed out that the strength of the Cochin Royal family is around 800. The properties consist of urban lands, rural lands, buildings and other assets considerable in volume and value. A litigative resolution of the conflicts among members with the plethora of interlocutory proceedings plus revisions and appeals may be an endless adventure which would surely bankrupt the poorer members and deny to everyone a share in the properties by metes and bounds for a generation to come. Of course, those who are already in possession of properties-and counsel for the respondent hinted that the petitioners belong to this category-would benefit by striking down this legislation and delay in legislative rectification of the situation and the further litigation that might be launched and so on. Those who have, have a vested interest in procratination; those who have not, have an urgent interest in instant justice. In this view, a non-curial instrumentality and procedure for partitioning the properties cannot be condemned as discriminatory. The alternative created by the statute is quite a reasonable and in our view a better instrument having regard to the totality of factors. Law is not a cocoon and keeps its eyes wide awake to the realities of life. The legislation in question has taken note of the fact that the Board has been for decades entrusted by the Maharaja by his Proclamation with the administration of the family estate and no complaints have ever been voiced against their management. The latter

legislation of 1961 has sanctified this Board. That legislation has gone to the extent of conferring powers of partitioning the Kovilagam properties on this Board and the present Act of 1978 does nothing more. We are unable to understand how what was good and valid in 1961 Act could become vicious and invalid in 1978. The composition of the Board and its history and experience convince us that it was a fit instrument for the task entrusted.

The fear expressed before us that the Board may ignore the norms of judicial procedure while settling the rights of parties is misplaced. We do not regard Section 3 of Act 15 of 1978 as dispensing with canons of fairplay of natural justice and of quasi-judicial values.

We realise that the enormous work of dividing the properties has to be carefully carried out. Quasi-judicial responsibilities are implied by the statute in the Board's functions and if the Board breaches these norms and canons the constitutional remedy under Article 226 comes into play. After all, the Board is a statutory body and not an executive creature. It has been saddled with effecting the rights of parties and is bound to act quasi-judicially. Its deviances are not unreviewable in writ jurisdiction. Therefore, we direct the Board to comply with the requirements prescribed in several decisions of this Court in quasi-judicial jurisdictions. Natural justice is obviously the first as this Court has ruled in a shower of cases especially highlighting in Maneka Gandhi's case(1) and M. S. Gill's case(2). This Court has gone to the extent of holding that natural justice require reasons to be written for conclusions made. The Organo Chemical Industries & Anr. v. Union of India & Anr.(1) this Court has held that the absence of a right of appeal does not spell arbitrariness. It is further held in the same ruling that giving of reasons for conclusions is ordinarily an important component of natural justice in quasi-judicial tribunals. In short, every facility that a party will reasonably receive before a quasi-judicial body when rights are adjudicated upon, will be available before this Board and we mandate it to extend such facilities and opportunities. We need hardly mention that when properties are sold parties must be intimated and the principles embedded in the Partition Act must be taken note of when properties are valued and allotted. The services of valuers of properties or of Commissioners must also be used. Moreover, parties must be given opportunity to object to reports of Commissioners, if any, appointed. In short, the general law, processual and substantive, bearing on allotment of properties cannot be thrown to the winds by the Board merely because Section 3 does not write these details into it. We must hasten to caution that no party can hold the Board in ransom by raising vexatious and frivolous objections and putting in proceeding after proceeding merely to delay or defeat. The Board is geared to completion of the partition with a reasonable speed and that purpose must inform its activities. While every party is entitled to a reasonable voice in the proceedings no party can enjoy the privilege of thwarting the processes of justice. These observations and directions which are built-in in Section 3, in our view, are sufficient guidelines to repel the submission that the power under Section 3(2) is unbridled and unconstitutional. Partitions are best done by a broad consensus and the Board will remember that constant consultation with the members may facilitate its work and reduce tension and friction.

Nor are we impressed with the argument that because appeals are absent justice is jettisoned. Oftentimes, appeals are the bane of the justice system, especially because the rich can defeat the poor and the weak can be baulked of their rights indefinitely that way. We do not mean to decry the right of appeal, but may not go with the petitioner in glorifying it in all situations. We have

emphasised that the Board is a statutory body and when it violates the prescriptions of the law or otherwise acts arbitrarily or mala fide, Art. 226 of the Constitution is a corrective. Nothing more is needed because everything needed is implied in that power.

The last and perhaps the least valid submission, with meretricious attraction, is the challenge based on unequal legislation picking out one from among equals for hostile treatment. We have held that the royal family estate is being partitioned on principles similar to those applicable to all other Kerala Hindu families and the only difference is a Board instead of a court to allot shares by metes and bounds. This, we have shown, is fully justified by the special circumstances. The Cochin Kovilakam vis-a-vis the Kerala State is sui generis. It has been legislatively dealt with as a special class throughout the history of Kerala and before. The Act impugned has none of the characteristics of class legislation and, is on the other hand, an equalising measure with a pragmatic touch.

We negative the specious submission.

We find no merit in this Special Leave Petition and dismiss it without costs.

V.D.K. Petition dismissed.