M.M. Thomas vs State Op Kerala And Anr on 6 January, 2000

Equivalent citations: AIR 2000 SUPREME COURT 540, 2000 (1) SCC 666, 2000 AIR SCW 73, 2000 (1) SCALE 14, 2000 (1) LRI 11, (2000) 1 JT 26 (SC), 2000 (1) JT 26, (2000) 1 KER LJ 30, 2000 (2) SRJ 86, (2000) 1 KER LT 799, (2000) 1 ICC 745, (2000) 1 SCALE 14, (2000) 2 MAD LJ 46, (2000) 1 SUPREME 1

Bench: K.T. Thomas, D.P. Mohapatra

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           CASE NO.:
Appeal (civil)  9663 of 1994

PETITIONER:
M.M. THOMAS

RESPONDENT:
STATE OP KERALA AND ANR.

DATE OF JUDGMENT: 06/01/2000

BENCH:
K.T. THOMAS & D.P. MOHAPATRA

JUDGMENT:
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JUDGMENT 2000 (1) SCR 33 The Judgment of the Court was delivered by THOMAS, J. Two questions are mooted in this appeal filed by special leave. First is whether the power to review a decision rendered under Kerala Private Forests (Vesting and Assignment) Act, 1971 (for short "the Acf) could have been exercised in the absence of any of the conditions specified in Section 8C of the Act. The second question - which has sprouted as ancillary to the first question - is whether the High Court has (de hors the said provision) power to review its own decision rendered b appeal filed under the Act. If both question are answered in the negative the appellant can succeed in getting the impugned order (of a Division Bench of the High Court of Kerala) annulled in his favour. Otherwise the impugned order will remain undisturbed.

The facts which led to the said order are the following ;

As per Section 3(1) of the Act, ownership and possession of all private forests in the State of Kerala stood transferred to and vested in the Government free from all encumbrances with effect from the "appointed day". The statute itself has fixed 10.5.1971 as the said appointed day. However, two exceptions were provided as per sub-sections (2) and (3) of Section 3 of the Act which are extracted below :

> "(2) Nothing contained in sub-section (1) shall apply in respect of so much extent of land comprised in private forests held by an owner under his personal cultivation as

> is within the ceiling limit applicable to him under the Kerala Land Reforms Act, 1963 (1 of 1964 or any building or structure standing thereon or appurtenant thereto.
>
> (3) Nothing contained in sub-section 1 shall apply in respect of so much extent of private forests held by an owner under a valid registered document of title executed before the appointed day and intended for cultivation by him, which together with other lands held by him to which Chapter III of the Kerala Land Reforms Act, 1963, is applicable, does not exceed the extent of the ceiling area applicable to him under section 82 of the said Act."

Forest Tribunals were constituted for adjudicating the disputes regarding applicability of the said exceptions. Appellant raised a claim in respect of 20 acres of land as not vested in the Government. As the claim was disputed appellant filed a petition before the Forest Tribunal for adjudication for the dispute. He mainly contended before the Forest Tribunal that the said area fell within sub-section (3) of Section 3 of the Act, but the Forest Tribunal repelled his claim and dismissed his petition. Thereupon he filed an appeal before the High Court of Kerala under Section 8A of the Act, By judgment dated 13.1.1982 a Division Bench of the High Court concurred with the view of the Forest Tribunal that the appellant is not entitled to the exemption under sub-section (3) of Section 3 of the Act. However, the Division Bench proceeded to consider whether appellant can have benefit of the exemption provided in Section 3(2) thereof. The Division Bench held thus ;

> "We are not satisfied with the manner in which the claim of the appellant under Section 3(2) was considered by the Tribunal. The Tribunal should have found that there was sufficient evidence in the case to show that the appellant satisfied the definition of the word 'owner' so far as his claim under Section 3(2) was concerned. The Tribunal should have therefore held that the appellant was entitled to the exemption in respect of 12 acres of land claimed under Section 3(2) of the Act, We hold that the Tribunal erred in declining the relief to the appellant at least to the extent of the property covered by Ext.P9 under Section 3(2) of the Act,"

The Act was subsequently amended by incorporating Section 8C therein as per which powers were conferred on the Forest Tribunal as well as the High Court to review the orders under certain conditions. The Government and the custodian of vested forests moved an application, in April 1984 before the High Court purporting to be under Section 8C(2) of the Act, for review of the earlier judgment of the High Court. On 17.2.1987 the Division Bench of the High Court reviewed the earlier judgment and dismissed the appeal Two premises were adopted by the High Court for such review. First was the following :

> "The affirmative decision in favour of the applicant - appellant that he was entitled to exemption under Section 3(2) of the Act 26 of 1971 did clearly amount to an error apparent on the face of the record justifying invocation of the power of review.
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> Second was that the counsel for the State failed to bring to the notice of the High Court before the judgment was passed on 13.1.1982 that the appellant had not filed

return under the provisions of the Kerala Land Reforms Act (for determining the ceiling limit of the area of the land held by him) stating that the disputed land was private forest, and that such a failure on the part of the State's counsel would amount to concession made by such counsel as envisaged in Section 8C(2) of the Vesting Act, Shri K.V. Vishwanathan, learned counsel for the appellant con-tended that power of the High Court to review the judgment or order passed under the Act is circumscribed under Section 8C(2) and that existence of the conditions specified in the sub-section is since qua non for such exercise. Learned counsel further submitted that in the application filed by the State for review of the earlier judgment no such conditions had been highlighted. Alternatively, learned counsel submitted that the conces-sion envisaged in Section 8C(2) cannot be made out by implication as the concession should be express and direct.

Section 8C consists of three sub-sections. The first sub-section deals with the power of Forest Tribunal to review its order. It is the second sub- section which deals with the powers of the High Court to review. Hence, that sub-section alone is relevant for consideration in this case. For understanding the scope of Section 8C{2) we extract sub-section below :

"(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."

A Division Bench of the High Court of Kerala in State of Kerala v. Subramonian Namboodiri, (1992) 2 Kerala Law Times 300 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 8C(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."

However, a Full Bench of the same High Court ia Pankajakshy Amma v. Custodian of Vested Forest, (1995) 1 Kerala Law Times 358, has held that the grounds of review are not exhaustive and they

cannot be restricted to specified grounds and so far as the High Court is concerned "it has inherent power to review besides power under S. 8C of the Act."

Learned counsel for the appellant endeavoured to show that the view adopted in the case of Subramonian Namboodiri (supra) is correct whereas the Full Bench view is erroneous. Before we decide the legal question we have to point out that the judgment of the High Court dated 13-1-1982 was obviously wrong since the contention based on Section 3(2) of the Act was upheld in that judgment. We say that the said judgment was obviously wrong on account of two reasons. First is that appellant did not make a claim for exemption under that sub-section at all. On the contrary his claim itself was based on sub-section (3). Second is that appellant gave evidence in the case exclusively for establishing his claim under sub-section (3).

It must be pointed out that any claim for exemption under Section 3(2) of the Act must necessarily be in respect of an area which was brought under cultivation by him before the appointed day i.e. 10-5-1971. In other words, if no cultivation was made by him on the land concerned before the said crucial date its owner cannot base a claim for exemption under sub-section (2). Appellant did not even mention in his claim petition that he had cultivated the said land before the said date nor did he mention in his evidence that the land was brought under cultivation even on a single day prior to 10-5-1971. Hence, there is no question of considering the exemption under sub-section (2), But the High Court went out of his claim and found that he is entitled to exemption under Section 3(2). Therefore the earlier judgment of the High Court dated 13-1-1982 was vitiated by error apparent on the face of the record.

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 Forest Tribunal is concerned its power of review can be traced to Section 8C. Unless 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 8C of the Act.

In this case we are not concerned with the power of review of the Forest Tribunal. It was the High Court which reviewed its own judgment and so the question is whether the High Court has such power de hors Section 8C(2) of the Act. Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has ao power to correct its own orders, even if the High Court is satisfied that there is error apparent on the face of the record?

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 envelopes 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 & Ors. v. State of Maharashtra & Anr, [1966] 3 SCR 744= AIR (1967) SC 1 a nine Judge Bench of this Court has recognised the aforesaid superior statue of the High Court as a court of plenary jurisdiction being a Court of Record. In Halsbury's Laws of England, 4th Edn. Vol.10, para 713 it is stated thus :

> "The chief distinctions between superior and inferior courts are found in connection with jurisdiction, Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and super-intendency in certain classes of actions, and cannot be deprived of its ascendency by showing that some other court could have entertained the particular action."

(Though the above reference is to English Courts the principle would squarely apply to the superior courts in India also.) Referring to the said passage and relying on the decision of this Court in Naresh Shridhar Mirajkar (supra) a two Judge Bench of this Court in MF. Elisabeth and Ors, v. Harwan Investment & Trading Pvt. Ltd., [1993] Supple. 2 SCC 433 = AIR (1993) SC 1014 has observed thus :

> The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction."
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> If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down, Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of record, In the aforesaid view of the matter we are not disposed to interfere with the impugned order though we are not deciding the question whether the failure to put forth a contention would amount to concession being made by the State counsel as envisaged in Section 8C(2) of the Act, In the result we dismiss this appeal.