

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

RP.No. 940 of 2015 (I) IN WP(C).34524/2006

AGAINST THE JUDGMENT IN WP(C) 34524/2006 of HIGH COURT OF KERALA
DATED 17-11-2014

REVIEW PETITIONER(S)/PETITIONER:

1. KINATTUKARA METAL CRUSHER UNIT
PEERUMEDU, KUTTIKANAM, IDUKKI DISTRICT
REPRESENTED BY PARTNER MATHEW JOSEPH
RESIDING AT KUNATTUKARA HOUSE, PINNAKKANADU, KALAKETTY
KONDOR VILLAGE, MEENACHIL TALUK.
2. MATHEW JOSEPH
RESIDING AT KINATTUKARA HOUSE, PINNAKKANADU, KALAKETTY
KONDOR VILLAGE, MEENACHIL TALUK.

BY ADVS.SRI.T.M.SUNIL
SMT.S.CHITHRA

RESPONDENT(S)/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY, DEPARTMENT OF FORESTS
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
KERALA AND CUSTODIAN, THIRUVANANTHAPURAM-695 001.
3. THE RANGE OFFICER
ERUMELI FOREST RANGE, ERUMELI
KOTTAYAM DISTRICT-686 509.

BY SRI.M.P.MADHAVANKUTTY, SPL. GOVT. PLEADER

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

AMI/

**ASHOK BHUSHAN, C.J. &
P.R.RAMACHANDRA MENON, J.**

**C.M.A.No.362 of 2015 and
R.P.No.940 of 2015 in
W.P.(C)No.34524 of 2006**

Dated this the 26th day of October, 2015.

O R D E R

RAMACHANDRA MENON, J.

This review petition arises from the judgment dated 17.11.2014 rendered by this Court in W.P.(C)No.34524 of 2006 and connected cases.

2. The main issue involved in the writ petition was with regard to the Constitutional validity of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act, 2003 ('EFL' Act). The matters were heard in detail on different dates and finally the judgment was pronounced upholding the validity of the statute. With regard to the individual grievances, the parties were relegated to avail the statutory remedy. It is against the said verdict that the petitioners therein have approached this Court by filing this review petition, contending that the Court omitted to consider

whether the particular statute would come within the purview of Entry nos.11, 12 and 13 of List 1 of the VIIth Schedule of the Constitution of India.

3. Since there is delay in filing the review petition, CMA No.362 of 2015 is filed to condone the said delay of 281 days. The reason stated in the affidavit filed in support of the application is as follows :

"Our counsel Sri.T.C.Mohandas used to inform us of the postings and developments. He also informed us that some matter involving the very same question arising in the cases before the division bench have been referred to the full bench and probably the government and the court would want the full bench to hear and decide the case first. Hence we were of the belief that only after the full bench decides the issue our case will be taken up. In the mean time our counsel Sri.T.C.Mohandas passed away on 12.7.2014. We were not aware of this. It was only thereafter the cases were taken up and decided. Due to the demise of our lawyer we did not get any communication about the matter being taken up or judgment being delivered. Even the letters from his office sent by his juniors did not reach me, as the unit was not running then. Only now 27.9.2015, when we came to meet Sri.Mohandas for discussing another matter and getting an opinion, we came to know that he passed away more than a year ago."

4. The case projected by the review petitioners is that the learned lawyer took his last breath on 12.7.2014 and it

was thereafter, that the matter was finalised by this Court. It is also stated that the letter sent by the junior counsel did not reach the review petitioner as the establishment of the petitioners was not in operation at that time. There is no case for the review petitioners that they were regularly contacting the lawyer. Hearing was held on several dates along with the connected cases and the petitioners were represented through the associate lawyers having vakalath and attached to the very same office. Admittedly, the associate lawyers had communicated the proceedings to the review petitioners, but the version is that such letters did not reach their hands. The so-called reason stated in the affidavit to condone the delay cannot be called a reason at all; much less anything satisfactory. As such, we do not find any reason to condone the delay of 281 days in filing the review petition.

5. With regard to the merits, as mentioned herein before, the case put up in the review petition is that the subject statute falls within the purview of **entry nos.11, 12**

and 13 of List 1 of the VIIth Schedule to the Constitution of India. It is seen that, no such case was ever put up by the writ petitioners, either at the time of filing the writ petition or at the time of arguing the case. The specific ground raised by the writ petitioners, particularly in '**Ground no.B**' of the writ petition was that the statute very much fell within the purview of the residuary **entry no.97 of List 1** of the VIIth Schedule to the Constitution of India and that it was never an item falling either under List 2 or List 3 of the Constitution of India. This being the position, the case now put up in the review petition is totally a different one and the attempt of the petitioners appears to be for an opportunity for 're-hearing'. It is also relevant to note that, no pleading is there in the review petition, to the effect that the point which is now sought to be asserted in the review petition was ever mooted or argued before this Court at the time of hearing. In the said circumstance, there is no merit as well.

6. It has been asserted by the Apex Court on an occasion that the power of review is not to have a re-hearing

as a matter of course. It is not a substitute for appeal, if aggrieved. There is no “error apparent on the face of the records”, to sustain the alleged cause and to call for interference. We find support from the decision rendered by the Supreme Court in **1995 (SC) page 455 (Smt.Meerabhanja Vs. Smt.Nirmala Kumari Choudhury)**, for declining the prayer.

In the above circumstances, we dismiss the application to condone the delay and the review petition as well, as devoid of any merit.

Sd/-
ASHOK BHUSHAN,
CHIEF JUSTICE.

Sd/-
P.R.RAMACHANDRA MENON,
JUDGE.

ami/

//True copy//

P.A. to Judge