
(1987) 09 KL CK 0036

High Court Of Kerala

Case No: O.P. No. 2477 of 1987

T. N. Godanaraman
Thirumulpad

APPELLANT

Vs

State of Kerala and
Another

RESPONDENT

Date of Decision: Sept. 3, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 114
- Constitution of India, 1950 - Article 14, 213, 226, 254(2)

Citation: (1988) 1 KLJ 488

Hon'ble Judges: V. Sivaraman Nair, J; M.M. Pareed Pillay, J

Bench: Division Bench

Advocate: T.R. Govinda Warriar, P.V. Jyothiprasad and P. Bhavadasan, for the Appellant;

Judgement

Sivaraman Nair J.

1. The validity of S. 8C (3) of the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 as amended by Amendment Act 36 of 1986 is under challenge in this Original Petition. S. 8C (3) of the Act enables the State Government to apply for review of any judgment or order passed by the High Court in any proceeding relating to a private forest, on the Government being satisfied of certain conditions. The State Government filed petitions seeking review of the judgments of this Court in O. P. 3992 of 1973, O. P. 6353/82 and C. R. P. 2271 of 1982. The petitioner is one of the many beneficiaries of those judgments. Naturally therefore, he would like to avoid review of the judgments. In addition to objecting to the review on merits, the petitioner challenges the vires of the statutory provisions which enable the Government to apply for review of judgments of this Court-We heard the review petitions alongwith this original petition. We felt it necessary that we should deal with the Constitutional validity of the enabling statute before we venture into an examination of the merits of the The facts, to the extent to which they are

necessary to consider the contentions which the petitioner raises, are the following:

2. The petitioner is a member of Nilambur Kovilakam, which is an erstwhile Malabar Jenmi family. The Kovilakam was the owner of large extent of forest lands of over 32,000 acres, in addition to vast areas of agricultural lands. All assets of the joint family except the forest lands were partitioned among its members pursuant to an agreement among them and on the basis of an award of a Committee of arbitrators which was accepted and registered on 12-9-1951. An interim management committee was constituted by agreement dated 17-10-1948 to sell the forest lands, realise and Distribute the proceeds among members and to manage the forests till that time. Since the interim management committee could not sell the whole of the private forests as was expected of it, some of the members of the Kovilakam filed a Suit, O. S. 22 of 1961 in the Subordinate Judge's Court, Kozhikode. Two joint receivers were appointed by the Sub Court to manage the suit property and to sell the same if possible. They were authorised to act on behalf of all the members of the Kovilakam by orders of the Sub Court in I. A. No. 821 of 1965 dated 1-7-1965. A preliminary decree for partition was passed on 24-9-1965. L.A. 701 of 1965 was filed for a final decree in terms thereof.

3. The State promulgated Kerala Private Forests (Vesting and Assignment) Ordinance, 1971 vesting all private forests in the State on the appointed date, namely 10-5-1971. The joint receivers acting on behalf of all the members of the Kovilakam, challenged the validity of that Ordinance in O. P. 4018 of 1971. The Ordinance having been enacted as Kerala Private Forests (Vesting and Assignment) Act 26 of 1971, the joint receivers challenged that Act also. This Court allowed that Original Petition alongwith a number of other Original Petitions in the judgment in Gwalior Rayon Silk Manufacturing Co. Ltd. v. State of Kerala (1972 KLT 628). The State filed appeals from that judgment. The Supreme Court allowed those appeals in State of Kerala v. Gwalior Rayon Silk Mfg. Co. Ltd. (1973 KLT 896).

4. In the meantime, the Custodian of Vested Forests had notified the sale in public auction, of the right to collect minor forest produce from the Nilambur Vested Forests. That notification was challenged in O. P. 3992/83 by the joint receivers. This Court held that the suit properties were in custodia legis and the State could not interfere with the possession of the receivers appointed by the Court until they were discharged. The Custodian filed I. A. 4005/76 in the trial court to get himself impleaded as party respondent and sought discharge of the receiver in view of Act 26 of 1971.

5. Some of the members of the Kovilakam then filed I. A. 4559 and 4560 of 1980 in O. S. No. 22 of 1961 in the Court of the Subordinate Judge, Kozhikode. The former application sought orders "directing the respondents to demarcate the extent of forest lands that would not vest under the Kerala Private Forests (Vesting and Assignment) Act 26 of 1971 in the State and to hand over possession of demarcated extent of the suit properties to the plaintiffs and defendants in the Suit." The respondent mentioned above was the Custodian of Vested Forests, who had got himself impleaded in the suit and had sought

an order discharging the Receivers. In the latter application. I. A. 4560 of 1980-the plaintiffs 2 to 10 sought permission of the Court to sell the lands in respect of which they had B claimed exemption under S. 3 (2) and (3) of Act 26 of 1971 to a firm "Nilambur Timbers", Kanichukulangara on the allegation that it was not possible for the members of the Kovilakam to hold and cultivate the land and that the offer of the firm to purchase the land with the forest growth was reasonable.

6. The custodian opposed the petitions on the ground that the Civil Court had no jurisdiction to entertain those applications in view of Secs. 6, 8 and 13 of Act 26 of 1971. Reference was also made to a decision of this Court in C. R. P. No. 1283 of 1977 negating the jurisdiction of the Civil Court to deal with claims for exemption from vesting under Sec. 3 (2) C and Sec. 3 (3) of Act 26 of 1971.

7. The Subordinate Judge allowed I. A. 4559 of 1980 and directed that 1680 acres of land would be exempted, and that the Custodian would demarcate and hand over the exempted land to the joint receivers. The Court ordered that the Custodian and the joint receivers should measure survey and demarcate the exempted land.

8. Against the order in I. A. No. 4559 of 1980, the State represented by the Custodian of Vested Forests filed C. R. P. No. 1062 of 1981. A point of jurisdiction as to whether the Civil Court was competent to grant exemption under S. 3 (2) or S. 3 (3) of Act 26 of 1971 was raised in that revision Petition. Particular reference was made to the decision of this Court in C. R. P. No. 1283 of 1977 that such questions could be decided only by the Forest Tribunal in view of Ss. 3, 8 and 13 of Act 26 of 1971. We are reasonably certain that had those points been urged, they would have been examined by this Court. Instead, the state bargained only for modification of the order of the Sub Court so as to enable the Custodian alone to survey and demarcate the exempted area. The C. R. P. was therefore disposed of, as if by consent, by order dated 15th April, 1981, by our learned brother, M.P. Menon, J. He observed, "identification and demarcation of the area not vested under S. 3 (3) of Act 25 of 1971 has to be done by the Custodian himself and not jointly by him and the receivers" and "the question whether the Civil Court is competent to pass an order of this kind as to whether the matter is in the exclusive jurisdiction of the Forest Tribunal is left open". The concession made in this behalf by the two joint receivers appointed in O. S. No. 22 of 1961 was recorded. That concession and the finding of this Court as extracted above indicate that the Court did not foreclose the state from agitating the point of jurisdiction of the Civil Court in subsequent proceedings.

9. I. A. 4560 of 1980, which was filed simultaneously with I. A. 4559 of 1980 was allowed by order dated 16-3-81, permitting the joint receivers to sell the exempted area of 1680 acres of private forests to "Nilambur Timbers" of Kanichukulangara. This fact was not brought to the notice of this Court at all.

10. The Custodian of Vested Forests had proceeded to demarcate 1680 acres of forest lands to be handed over to the joint receivers. The Chief Conservator of Forests and

other senior officers of the Department conducted local inspection and demarcated the area lying on the western side of the Bhoodan colony and south of Karadan Puzha as the exempted area. Government issued G. O. Rt. 1368/82/AD dated 23-5-1982 to demarcate and transfer the above land to the receivers.

11. The Joint Receivers filed Report No. 4 of 1982, pointing out that the sketch and plan of the area of 1680 acres which had been exempted from vesting had been finalised, but the Government was delaying delivery of the exempted forest lands. They sought orders directing the custodian of vested forests to hand over the forest lands, and the forest officers not to prevent the receivers from cutting and removing the trees, as also for issue of timber transit passes authorising removal of timber. In his objection to this report, the Custodian raised the point of jurisdiction of the Civil Court which was left open by this Court in the judgment in C. R. P. No. 1062 of 1981. In his order dated 11-8-1982, "the Sub Judge, Kozhikode accepted the objection to jurisdiction and refused to order the Custodian to hand over the forest land to the joint receivers. He also found that nothing was brought to his notice which enabled the receivers to claim any direction to the forest officials to issue timber transit passes. The Sub Judge, however, directed the Custodian to comply with the direction contained in the order in I. A. 4559 of 1980 as modified by the judgment of this Court in C. R. P. No. 1062 of 1981.

12. Defendants 18 and 27 in the Suit filed C R.P. No. 2271 of 1982 challenging the order dated 11-8-1982 of the Sub Judge on" report No. 4 of 1982 filed by the receivers. They had also filed O.P. No. 6353 of 1982 challenging G. O Rt. 1368/82/AD dated 25-5-1982, whereunder, 1680 acres of land on the western side of Bhoodan colony and south of Karadan Puzha were ordered to be handed over as exempted forest lands. O.P. No. 6353 of 1982" and C.R.P. No. 2271 of 1982 were heard together and were allowed by a common judgment dated 25-1-1983.

13. The State filed three Special Leave Petitions -- SLP No. 9304 of 1983 against the judgment in O.P. No.6563 of 1982, SLP No. 9305 of 1983 against the order in C.R.P. 2271 of 1982 and SLP No. 11532 of 1983 against the order in C.R.P. No. 1062 of 1981. After issue of notice to respondents, the Supreme Court dismissed the above petitions, without entering into the merits of the controversy.

14. In the meantime, I.A. No. 2624 of 1983 was filed before the Sub Court, Kozhikode for a direction enabling the receivers to take possession of the property allotted by order in T.A. No. 4559, of 1980. The Sub Court ordered restoration of 1680 acres to the members of the Kovilakam in terms of its previous order That order was challenged by the Custodian in C.R.P. No. 2621 of 1983. Even though an order of stay was initially issued, that was vacated later stating that possession might be taken by moving the lower court in execution. E. P. No. 230 of 1983 was filed thereafter for execution of the order in I.A. No. 4559 of 1980. That was allowed by order dated 29-10-1983 and delivery was ordered by 29-11-1983. The State filed E.A. No. 867 of 1983 for review of the order in the above execution petition. That Was dismissed by order dated 12-3-1984. Against that order, the

Custodian has filed C.R.P. No. 1215 of 1984.

15. The State filed petitions under S. 8C (3) of Act 26 of 1971 as introduced by ordinance No. 17 of 1984. The same provision has now been re-enacted in Act 36 of 1986. That provision is in the following terms:

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 an order referred to in subsection (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.

Sub-section (4) thereof provides for the form in which an appeal under sub-section (1) or an application under sub-section (2) or sub-section (3) shall be filed. Subsection (5) stipulates, that

the High Court may 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.

16. The preamble of Act 36 of 1986 contains the reasons for the amendment. The recitals in the preamble, which are relevant for the present purpose, are as follows:-

x x x

Whereas a large number of appeals filed by the Government before the High Court u/s 8A of the said Act have been dismissed by that Court either on the basis of concessions made before the Court without the authority in writing of Government or due to the failure to produce the relevant data and other particulars before the said Court;

And whereas a large number of appeals filed by the Government before the High Court u/s 8A of the said Act have been dismissed by that Court either on the basis of concessions made before the Court without the authority in writing of Government or due to the failure to produce the relevant data and other particulars before the said Court;

And whereas petitions by the Government for special leave to appeal against the orders of the High Court u/s 8A of the said Act have been dismissed by the Supreme Court;

And whereas a large number of the judgments and orders of the High Court in writ petitions or other proceedings, relate to private forests vested in the Government and such judgments and orders have been passed due to suppression or misrepresentation of facts or due to failure to produce relevant data and other particulars before the said Court;

And whereas possession of large extent of private forests or lands comprised in private forests which have vested in the Government under the said Act are liable to be restored by the Custodian to the persons who were owners thereof immediately preceding the commencement of that Act, resulting in great loss to the State and detriment to the public interest;

BE it enacted in the Thirty-seventh Year of the Republic of India as follows

17. Section 8B confers power on the Custodian to apply for review of decisions of the Tribunal. Section 8C confers power on the Custodian to file appeal or application for review in certain cases, if the Government is satisfied that any decision of the Tribunal u/s 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 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. Section 8C (2) provides for review of any order of the High Court in appeals u/s 8A, (including an order against which an appeal to the Supreme Court has not been admitted by that Court,) if the Government is satisfied that such order was 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.

18. The entire scheme of Act 36 of 1986, and the Ordinances, which preceded the same, by which power was conferred on the State or the Custodian to file appeals or applications for review, is based on the declaration contained in the preamble of the enactment, that due to concessions wrongly made, or suppression or misrepresentation of facts or due to failure to produce relevant data and particulars before Court or Tribunals, as the case may be, the Government had lost many cases resulting in orders for restoration of large extents of private forests to erstwhile owners. It is essential that the person who invokes the power u/s 8C (3) shall prove existence of the jurisdiction and preconditions, which alone justifies exercise of the power.

19. Sri. T. R. G. Warriar, counsel for the petitioner in the Original Petition submits that Act 36 of 1986 is invalid for the following reasons.

(a) Ordinance 39 of 1983 which was re-enacted as Ordinance 17 of 1984, 32 of 1984, 50 of 1984 and ending with Ordinance 66 of 1986, was a fraud on the power conferred under Article 213 of the Constitution of India and those Ordinances were of no effect. Act 36 of 1986 is unconstitutional, since its only office is to enact provisions of the invalid Ordinances into a legislative enactment.

(b) The State has no legislative competence to pass a law controlling or restricting or affecting either the power conferred on this Court by Article 226 of the Constitution or the efficacy of a writ which is issued in exercise of that power.

(c) Section 8C is violative of equal protection of the laws guaranteed by Article 14 of the Constitution of India, in that only the State and the Custodian and not the parties who were affected by adverse judgments of Tribunals or the High Court are enabled to file appeals or review petitions against unfavourable judgments.

(d) The basic assumptions contained in the Preamble to Act 36 of 1986 and the body of Section 8C (3) are factually nonexistent and legally unsustainable. They do not justify conferment of power of review of all judgments in respect of private forests rendered by the High Court.

(e) The impairment of the rule of res-judicata involved in the enactment of section 8C is a manifestation of arbitrariness and unreasonableness, violative of Article 14 of the Constitution of India.

(f) Section 8C is destructive of the basic structure of the Constitution and the Rule of Law, since power is arrogated by the Government to nullify judgments of this Court which are binding on parties.

(g) The grounds mentioned as justifying the application for review by State or the Custodian amount to conferment of additional and undeserving privileges on one of the litigants, in addition to and in supersession of provisions of Order 47 Rule 1, Code of Civil Procedure. Reference is also made to Order 41 Rule 27 of the Code, which enables production of additional evidence. It is submitted, that the effect of section 8C (3) is to over-ride the salutary provisions of procedural statutes and to enable one of the litigants to take undue advantage of the Court, notwithstanding the fact that they had suffered binding judgments for long period of time.

20. We will now consider the objections raised by the petitioner against, the validity of Section 8C (3) of Act 36 of 1986.

21. We are not impressed by the submission that Act 36 of 1986 is invalid for the reason that it is substantially in the same terms as Ordinance 39/83 which was promulgated on 19-11-1983 and which was re-enacted as Ordinance 17/84, 32/84, 50/84, 8/85, 62/85, 89/85, 34/86 and 66/86 at half, yearly intervals. : The argument is that such repetitive exercise of the power under Act 2133 of the Constitution of India is a malafide and

colourable exercise of power. Reliance is placed on the decision of the Supreme Court in Writ Petition No. 412 & 415 of J984.

22. We are not concerned in this case with any of those Ordinances. The fact that an ordinance, if challenged properly, would have been declared invalid, is no reason for us to hold that a legislative enactment in the same terms as the Ordinance should be held to be constitutionally invalid. The validity of a statute has to be examined, ordinarily, on the basis of competence and vires and not on such problematic assumptions.

23. We have now to deal with the submission that the State Legislature has no competence to pass a law controlling, restricting or affecting either the power conferred on the High Court by the Constitution, or the writ which was issued in exercise of that power. The further submission is that a provision in the State enactment abridging the jurisdiction under Article 226 of the Constitution will be contrary to the basic structure of the Constitution of India.

24. The question whether the State is entitled to enact a law has to be considered with reference to the relevant legislative entries. The validity of Act 26 of 1971 was upheld by the Supreme Court in the decision reported in [State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing \(Wvg.\) Co. Ltd. etc.,](#) . The object of Act 36 of 1986 is only to incorporate incidental procedural provisions relating to questions arising under that enactment. A State enactment providing for procedure in relation to determination of questions arising under the enactment cannot be considered as infringing on the power of the High Court under Article 226 of the Constitution of India. It is not as if the State Legislature is devoid of any power to enact laws in relation to the exercise of the power under Article 226 of the Constitution of India. Entry 65, List II of Schedule VII enables the State Legislature to enact laws in relation to "jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this list". Entry 18 in the State List is: "Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

25. If we read entry 65 along with entry 18 of List II of Schedule VII of the Constitution of India, it is within the Legislative competence of the State to enact laws relating to or dealing with jurisdiction and powers of courts in respect of agricultural lands. In *State of Kerala v. Gwalior Rayon Silk Manufacturing (Wvg) Co. Ltd.* (1973 K.LT 896) the Supreme Court upheld the validity of Act 26 of 1971 on the ground that private forests in Kerala are agricultural lands, which are covered by entry 18 in the State List. A provision relating to jurisdiction and powers of courts in respect of a matter which is within the legislative competence of the State by virtue of entries in the State List is, therefore, perfectly competent.

26. Alternatively, entry 17 A of the Concurrent List-List III of Schedule VII "forest" read with entry 46 of that List dealing with "jurisdiction and powers of all courts, except the

Supreme Court, with respect to any of the matters in this List", may provide sufficient competence for the State to enact Act 36 of 1986. The President of India had assented to Act 36 of 1986 on the 1st day of December, 1986, as is evident from notification No.16662/Leg. B2/86/Law dated 1st December, 1986. An enactment by the State Legislature under Entry 17 A read with Entry 46, having received the assent of the President, is not liable to be called in question for absence of legislative competence. Article 254 (2) of the Constitution of India provides that even in a case where there is inconsistency between a later law made by the Legislature of the State with respect to one of the matters enumerated in the concurrent List and an earlier law made by Parliament or an existing law with respect to that matter, the State law shall prevail within the "State, if that had been reserved for consideration by the President and had received his assent. In the light of the above constitutional provisions, we have no hesitation in holding that it is perfectly competent for the State Legislature to enact a law dealing with jurisdiction of the High Court in respect of a matter covered by the State List viz., Entry 18, or in the alternative, Entry 17A in the Concurrent List. The Kerala High Court Act 1959 was obviously enacted in view of those entries and provides for an appeal from the judgment of a single Judge exercising jurisdiction under Article 226 of the Constitution. The Rules framed by the High Court regulate the procedure of the Court in proceedings under Article 226 of the Constitution of India. We have not yet heard it argued that these provisions are invalid for the reason that they should have been provided in the Constitution itself and not by State enactment.

27. Another aspect of the same submission is that the State Legislature has no power to invalidate or impair the efficacy of a writ issued by the High Court in exercise of its powers under Article 226 of the Constitution of India. We have found that the State Legislature is competent by reason of the provisions contained in Entry 65 of List II and Entry 46 of List III to enact laws relating to jurisdiction and powers of High Court in respect of matters included in those two lists. Such a provision relating to jurisdiction and powers of the High Court may either be prospective or retrospective. A retrospective enactment in exercise of those powers under the relevant Entries within competence of the State Legislature is as much valid as a prospective enactment, except in rare cases where the period of retroactivity may itself smack of arbitrariness. There is no such case for the petitioners here. Their only submission is that an enactment which invalidates or impairs the efficacy of a writ already issued by this court by virtue of a judgment is beyond the competence of the State Legislature.

28. To accept this argument, we should hold that the Legislature is totally powerless to erase the effect of judgments or to enact retrospective laws affecting jurisdiction, powers and procedure of courts, including the High Court. The object of Section 8C (3) of Act 36 of 1986, as we "understand it, is not to impair the efficacy of a writ of mandamus already issued by this Court, but to enable the court to consider more comprehensively as to what should have been the judgment which this court would have rendered, had all the relevant facts or relevant data and materials been properly brought before it and had

there not been any suppression or misrepresentation of facts. That we believe is in substance, the effect of the provisions of the CPC dealing with the power of review, viz, section 114 and Order 47 of the CPC as well. If we are correct in this assumption, the provisions of Section 8C incorporated in Act 26 of 1971 by section 2 of Act 36 of 1986 enabling the State to file an application for review cannot be treated as impairing the power of the Court.

29. It is beyond dispute now that judgment of the High Court in exercise of its power under Article 226 of Constitution of India is amenable to review. We need only refer to some of the decisions of the Supreme Court in this regard, in [Shivdeo Singh and Others Vs. State of Punjab and Others](#), and in [Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh](#), . In [O.N. Mohindroo Vs. The District Judge, Delhi and Another](#), the Supreme Court observed: "All processes of the Court are intended to secure justice and one such process is the power of review. No doubt frivolous reviews are to be discouraged and technical rules have been devised to prevent persons from reopening decided cases". If a review of the judgment of this court, in exercise of its writ jurisdiction under Article 226 is permissible by applying the principles of section 114 and Order 47 of the Code of Civil Procedure, it passes our comprehension how a procedural provision in a State enactment promulgated with its competence and specifically providing for review in specified circumstances shall be an invasion of the powers of this court and therefore invalid. If a review for reasons analogous to those specified in Order 47 Rule 1 does not affect the efficacy of a writ already issued by the High Court, it cannot be reasonably urged that the provision for review for specific reasons stated in a competent State enactment shall be an invasion of the jurisdiction of this court under Article 226 of the Constitution or impairment of the writ already issued in exercise of the powers under Article 226.

30. Counsel for the petitioner relied, rather heavily, on the decision of the Supreme Court in [Madan Mohan Pathak and Another Vs. Union of India \(UOI\) and Others](#), . That decision dealt with the validity of Life Insurance Corporation (Modification of Settlement) Act 72 of 1976 which went counter to a writ of mandamus issued by the Calcutta High Court directing payment of bonus to the employees of the Life Insurance Corporation for the year 1975-76 in accordance with pre-existing industrial settlement. Though a letters patent appeal was filed against the judgment of the Calcutta High Court, that appeal was not pressed by the Life Insurance Corporation and was therefore dismissed. The judgment thus became final. The Union parliament enacted Act 72 of 1976 with the avowed object of undoing settlements which were entered into between the Corporation and its Class III and Class IV employees on 24 January and 6th February 1974 and which formed the basis of the mandamus issued by the High Court of Calcutta. The Supreme Court held that the writ of mandamus already issued by the Calcutta High Court could not be undone COVERTLY by a legislative enactment retrospectively annulling the settlements which formed the basis of the mandamus. That decision does not appear to us to be an authority for the proposition that a decision of the High Court in proceedings

under Art. 226 leading to the issue of a writ of mandamus is immune from the power of review. The petitioner has no case that the Court is not competent to invoke its inherent power of review against any judgment directing issue of a writ of mandamus. Nor does he have a case that the exercise of the power of review should be conditioned by the nature of the relief granted even in a case where there was a manifest error in the judgment which fully justified invocation of the power under Order 47 Rule 1 of the Code of Civil Procedure. The enactment of an enabling provision authorising the State to file an application for review of Judgments under specified circumstances cannot therefore be treated as incompetent and arbitrary for the only reason that the judgment sought to be reviewed has led to the issue of mandatory directions.

31. We are not impressed by the submission that Act 36 of 1986 is an invalid legislation since that enactment subverts finality of judgments and the principles of res judicata. We should remind ourselves that the only office of Sec. 8C of Act 26 of 1971 as amended by Act 36 of 1986, with which we are concerned in this original petition, is to enable the State Government or the Custodian of vested Forests to file an application for review of judgments. Sub-Section 5 of that Section only provides that the High Court "may pass such orders thereon as it may think fit." The effect of impugned provisions is only to enable the Court to exercise the power of review, which, even otherwise, is inherent in the Court. Specific grounds enabling the State to seek review of judgments are prescribed. Those grounds are not in derogation but in supplementation of the grounds on which the Court may otherwise exercise its jurisdiction. If Order 47 Rule 1 of the CPC specifically conferring the power of review and the inherent power of the Court of record to review its own judgments do not subvert the finality of judgments or the principles of res-judicata, it is difficult to comprehend how enactment of an enabling provision and addition of grounds for invoking that enabling power can contravene these principles. We do not understand any of the decisions of the Supreme Court to have laid down the proposition that a Statutory conferment of the power of review or a provision enabling invocation of that power runs counter to the principles of finality of judgments or res-judicata or estoppel by judgment.

32. It is true that the court is given the power to pass orders on the application notwithstanding anything in the Act or the Limitation Act or any other law or in any judgment, decree or order of any Court or other authority". That is no doubt a drastic provision. But the power is entrusted to this Court. Conferment of such a drastic power seems to us to be fully justified by the recitals contained in the preamble, which disclose a sordid state of affairs in the conduct of cases dealing with private forests.

33. Counsel for the petitioner relied on the decision of the Supreme Court in State of V. P. v R. Vijay Anand Maharaj, 1963 SC 946. to contend that section 8C (3) of Act 26 of 1971 as amended by Act 36 of 1986 amounts to a command to the High Court to exercise its discretionary jurisdiction in a particular manner and is, therefore, incompetent.

34. In that decision, the Supreme Court had to consider the validity of Sec. 11 of U. P. Act XIV of 1956 which not only enabled a party to the proceeding to apply for review of the judgment to the Court or authority, but also provided that "the Court or authority to which the application is made shall review the proceedings accordingly and make such order, if any, varying or revising the order previously made, as may be necessary to give effect to the provisions of the Principal Act as amended by Secs. 2 and 3 of this Act." The court held that Sec. 11 did not apply to judgments of the court under Art. 226 of the Constitution, since they were not proceedings under the Principal Act. On the assumption that the provision applied to proceedings under Art. 226 also, the Court held Sec. 11 of Act XIV of 1956 to be invalid for the following reason :

Should it be held that this Section applies to an order made by a High Court under Art. 226 of the Constitution, the statutory mandatory injunction issued under the second part of the section to the High Court to make an order in a particular way would be "constitutionally void.

35. Those observations cannot have any application to the present case, since sub-section 5 of section 8C does not contain any statutory mandatory injunction to make an order in a particular manner. That provision leaves it to the court to make any order it deems fit. The argument that, section 8C compels the exercise of the power of review in a particular manner and therefore it is invalid cannot be accepted.

36. Counsel for the petitioner was at pains to point out that the assumptions made in the preamble of Act 36 of 1986 are factually non-existent. We will proceed on the assumption that we are entitled to examine the question whether the legislative declaration is factually correct. We had occasion to consider the factual situation leading to the conferment of the power of review at some length in judgments in *State v. M. M. Thomas*, 1987 (2) KLT 530, and 1987(1)KLT (SN) 51 *Narendran J.*, considered these aspects incidentally in *D.F.O. v. Cheriyan* 1982 KLT 682. Our learned brother *Sukumaran J.*, upheld the validity of similar provisions contained in *Kerala Private Forests (Vesting & Assignment) Amendment Ordinance 17 of 1984* in *Bhagavathi Tea Estate Ltd. v. State*, 1979-85 K.U.C. 753. After referring to the statement of objects and the reasons for the Bill, which was in similar terms as the preamble of Act 36 of 1986, which we have extracted above, he observed:

The passage 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, 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 check 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 tender 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.

That judgment was affirmed in Writ Appeal 340 of 1984,

37. In *State v. M. M. Thomas* we dealt with the power of review of appellate orders of this Court u/s 8C (2) of the Act. The appeal was decided on a point on which the parties had not joined issue and on assumptions in favour of the appellant which were not seriously disputed. We found that the appellate order which rested on a ground which was not raised in the appeal and on wrong concession of fact was liable to be reviewed in exercise of the power u/s 8C (2) of Act 26 of 1971.

38. In *V.M. Abraham v. State and Others* 1937 (I) KLT (S.N.) 57 - W.A. 167 of 1983 - we commenced our judgment as follows:

This is an extra-ordinary case - one of the few which led to the most extra-ordinary legislation in the legislative history of the world, where by the Kerala Legislature incorporated S. 8C 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.

39. We are therefore of the opinion that the reasons mentioned in the preamble of Act 36 of 1986 to justify the conferment of the power of review are fully made out.

40. In [Madan Mohan Pathak and Another Vs. Union of India \(UOI\) and Others](#), the Supreme Court had occasion to consider the proper course of action to be adopted in a case where the legislature feels that an enactment has to be amended basically subsequent to a final judgment rendered by the High Court under Article 226 of the Constitution of India. We have referred to some aspects of that decision earlier. That case dealt with the provisions of the Life Insurance Corporation (Modification of Settlement) Act, 1976 which was enacted to take away the force of the judgment of the Calcutta High Court recognising the settlements in favour of Class III and Class IV employees of the Corporation. But apart from nullifying the settlements retrospectively, the Act did not contain any provision which set at naught the effect of the judgment of the Calcutta High Court or the binding character of the writ of mandamus issued against the Insurance Corporation. The court held that after altering the factual or legal basis of the judgment by an enactment, the Legislature could have provided for a review or an appeal on the basis

of the amended law; and as long as that was not done, the judgment of the Calcutta High Court and the mandamus issued as a consequence thereof, should retain their vitality. The following observations from the judgment of Bhagavathy (J) (as he then was) will make the position absolutely clear.

Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annul cash bonus under the Settlement by issuing a writ of Mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not the Life Insurance Corporation is bound to obey the writ of Mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1st April, 1975 to 31st March 1976 to Class III and Class IV employees.

41. In the present case, the impugned enactment enables the State Government to file an application for review of the judgment directing issue of a writ of mandamus and leaves it to the court to exercise the power of review. If the court is satisfied that sufficient grounds exist to review the judgment, it may do so. If the power is so exercised, the judgment may be varied or modified and the mandamus may be recalled. The entire power is left to this Court which made the judgment and issued the mandamus. The enactment does not arrogate any such judicial power to itself. Neither in principle, nor on the basis of precedents, can it be held that the Legislature has no such power to enact such an enabling statute.

42. Counsel for the petitioner was at pains to point out that the grounds for review are contrary to the accepted legal position in India about the extent of the authority of the legal practitioner in the Conduct of cases on behalf of his client. This aspect may be more relevant in dealing with the applications for review rather than in dealing with the constitutional validity of the Statute. We have already noticed that the Legislature had sufficient justification to take note of the alarming consequences of the conduct of applications before Tribunals and appeals and other proceedings in courts on behalf of the custodian and the State by their counsel. We need only add that the State owed a duty to itself and the mute millions who constitute it to defend itself against depredations of its wealth by any one, however highly placed he be, however noble his profession and however laudable his protestations be. We do not subscribe to the theory that even when manifest misconduct of a legal practitioner contrary to the interest of his client is evident, the client should be denied any relief because of the assumption that counsel always acts in the best interests of his client. We therefore hold that the Kerala Private Forests

(Vesting and Assignment) Amendment Act 36 of 1986, whereby Sec. 8C and other provisions were incorporated in Act 26 of 1971 is valid. The original petition "is " accordingly dismissed. The parties will however suffer their respective costs.