

### **Kunhaymmad vs.- State of Kerala**

- Kerala Private Forest ( Vesting & Assessment) Act, 1971 came into force by publication in Kerala Gazette on 23.8.71
- The Act was given retrospective effect with effect from 10.5.1971
- In kerala there is a family consisting of 71 members and huge lands having area 1020 acres were vested in the State by that Act
- The said family filed an application in the Forest Tribunal which was registered as OA No.5 of 1981
- By an order dated 11.8.82 the Id. Tribunal declared that the land did not vest in the State.
- An Appeal was filed by the State of Kerala but on **17.12.82** the High Court dismissed the appeal
- There was no statutory remedy of appeal/revision or review provided against the order of High Court.
- The State of Kerala filed SLP which was registered as SLP(c) No.8098 of 1983
- On **18.7.83** the petition seeking Special Leave to appeal was dismissed.
- The order as under “ Special Leave petition is dismissed on merits. ”
- Section 8C of the Kerala Forest Act was amended giving it a retrospective effect from 19.11.83 conferring power to file appeal or review application.
- By invoking the amended section State of Kerala filed Review application Registered as RP No. 14 of 84 before the High Court of Kerala
- The Respondents Advocate vehemently opposed as regards maintainability of the proceeding but the High Court ordered for hearing of the review petition on merit .
- Feeling aggrieved the sought for leave to appeal which was granted on 16.9.2106
- 14.3.2000 the matter came up for hearing before the division bench they directed the matter to be referred to a bench of three judge having regard to the importance to the question of law.
- After dismissal of the petition seeking Special Leave to Appeal on 18.7.83 the matter again came back in the High Court by filing Review Petition.

- Tremendous arguments and counter arguments were made after as regards maintainability of the matter after dismissal of SLP.
- The Hon'ble bench pleased to observe that “  
..... the case at hand poses no problem for solution. The earlier order of the High Court was sought to be subjected to exercise of appellate jurisdiction of Supreme Court by the State of Kerala wherein it did not succeed. The prayer contained in the petition seeking leave to appeal to this court was found devoid of any merits and hence dismissed. The order is a non-speaking and unreasoned order. **All that can be spelled out is that the Court was not convinced of the need for exercising its appellate jurisdiction.** The order of the High Court dated 17.12.2012 did not merge in the order dated 18.7.83 passed by this court. **So it is available to be reviewed by the High Court.**
- Moreover, such a right of review is now statutorily conferred on the High Court by section (2) of Section 8C of the Kerala Act. Legislature has taken care to confer the jurisdiction to review on the High Court as to such Appellate orders also against which though an appeal was carried to the Supreme Court, the same was not admitted by it.
- An appeal would be said to have been admitted by the Supreme Court if **leave** to appeal was granted.
- The constitutional validity of sub- section (2) of Section 8C **has not** been challenged

**The appeal is dismissed**

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