

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.36607 of 2016

1.N.Rabiyath Beevi
2.Jamaliya Beevi
3.Mohammed Abhas
4.Sowhar Saddigun Basha Petitioners

Vs.

State rep.by
the Tahsildar,
Office of the Tahsildar,
Alandur,
Kancheepuram District.
... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling the impugned order issued by the respondent in his proceedings O.Mu.No.1034/2016/A6 dated 18.03.2016 and quash the same and consequently, direct the respondent herein to issue Legal Heir Certificate to the petitioner and her legal heirs based on the petitioners' application furnished to the respondent.

For Petitioners : Mr.G.Anbu Chezheian
For Respondent : Mr.P.Senthilvel,
Government Advocate

O R D E R

Mr.P.Senthilvel, learned Government Advocate, takes notice on behalf of the respondent. By consent of the counsel, the Writ Petition itself is taken up for disposal at the admission stage.

2. The learned counsel for the petitioners has submitted that the first petitioner herein got marriage with her husband in the year 1968 as per Muslim Customs and Rites. Even before their marriage, her husband had already married another woman and that marriage was dissolved by the Village Panchayators and

Muslim Customs as they had no children. Pursuant to the first petitioner's marriage with her husband, she got one daughter and two sons, viz, the petitioners 2 to 4 herein. Her husband died on 7.11.2014. Her husband's death was registered and the Tahsildar, Chengalpattu, issued a Death Certificate in TKCA No.1508/2014/A5 dated 21.11.2014. As per the Death Certificate, the first petitioner filed a petition for issuing Legal Heir Certificate to all the petitioners herein. Without making proper enquiry, the respondent rejected her petition vide Communication dated 18.3.2016. Therefore, the petitioner is before this Court seeking for a direction to the respondent to issue Legal Heirship Certificate to the petitioners herein by quashing the impugned communication dated 18.3.2016. In support of his contention, he relied upon the decision rendered by Madurai Bench of this High Court in V.Santha v. The District Collector, Maudrai and others reported in 2016(3) TNLJ 97 (Civil).

3. Heard the learned counsel appearing for the parties.

4. Even in the impugned communication, it has been very clearly stated that the first wife had been divorced by elders of village as per village customs and the petitioner's husband married the first petitioner herein as the second wife in the year 1968 and they also got children from the second marriage. Merely, the first petitioner is the second wife, it cannot be a reason to reject her application for Legal Heirship Certificate. In this connection, the learned counsel for the petitioners has also relied upon the judgment of this Court in V.Santha v. The District Collector, Maudrai and others reported in 2016(3) TNLJ 97 (Civil) wherein it has been held that there is no embargo to grant Legal Heirship Certificate after enquiry and subjective satisfaction by the authority concerned in respect of second marriage. Therefore, summary rejection of the request of the petitioners for Legal Heirship Certificate by the impugned communication of the respondent without even giving opportunity to the petitioners and without proper enquiry, is liable to be set aside and accordingly, set aside. The respondent is directed to give an opportunity to the petitioners and others persons, if any, to prove their case and make enquiry and thereafter, pass appropriate orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

5. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

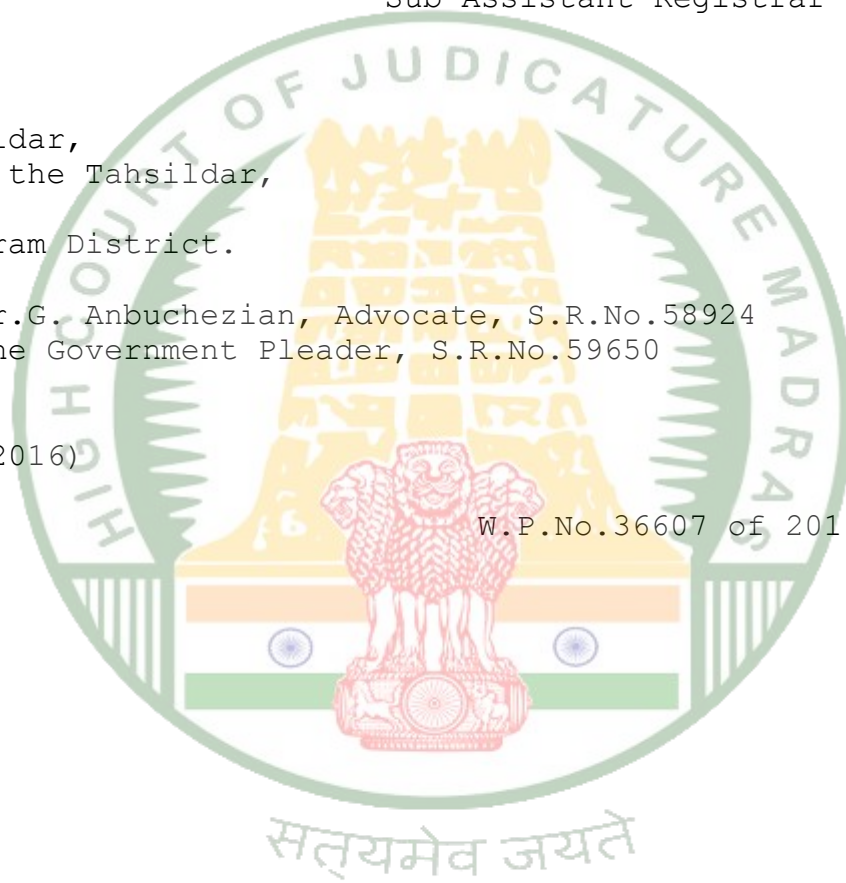
To

The Tahsildar,
Office of the Tahsildar,
Alandur,
Kancheepuram District.

+1cc to Mr.G. Anbuchejian, Advocate, S.R.No.58924
+1cc to the Government Pleader, S.R.No.59650

nmi (CO)
md(22/11/2016)

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