

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM :

THE HON'BLE MR. JUSTICE C.T.SELVAM
AND
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Writ Petition No.32989 of 2017

Minor A.Ajith Kumar
S/o.K.Arumugam
Rep. by his father and natural guardian
Thiruninravur Post
Door No.15, Ganapathhy Nagar
Thiruvallur District - 602 024. ... Petitioner

Vs

The Revenue Divisional Officer,
Thiruvallur,
Thiruvallur District. ... Respondent

PRAYER: Petition under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records relating to the order of rejection passed in proceedings in Na.Ka.No.1008/2017/A5, dated 03.08.2017 on the file of the respondent, to quash the same and to direct the respondent to issue community certificate to the petitioner that he belongs to "Kurumans (ST) Community" based on the community certificate already issued to the petitioner's father.

For Petitioner : Mr.V.Elangovan

For Respondent : Mr.S.N.Parthasarathy
Government Advocate

ORDER

(Order of this Court was made by M.V.MURALIDARAN,J.)

Assailing the order dated 03.08.2017, in and by which the respondent rejected the application filed by the petitioner seeking issuance of community certificate in favour of his son, minor A.Ajith Kumar, the present writ petition is filed.

2. The facts in a nutshell are as under: The petitioner claims that he hails from Tiruninravur Village in Thiruvallur District and that he belongs to "Kurumans Community", which is a Scheduled Tribe Community. He states that the Tahsildar, Tiruvallur District issued a community certificate to that effect as early as 04.06.1984 and the same has also been entered in his school records.

3. On the strength of the community certificates issued to him and his relatives, the petitioner made an application on 02.06.2016 seeking issuance of community certificate to his minor son. However, it is alleged that the respondent, by the impugned proceedings dated 03.08.2017, rejected the application of the petitioner stating that since the origin of the petitioner is Gudalur Village, Nilgiris District, he has to obtain community certificate for his son from the said district only. Impugning the said order, the present writ petition is filed for the relief stated supra.

4. The learned counsel for the petitioner strenuously contended that the petitioner was born in Tiruninravur and based on his nativity the Tahsildar, Thiruvallur, issued a community certificate to him to the effect that he belongs to Kurumans Community and even the family card shows that for the past sixty years, the family of the petitioner is residing in Tiruninravur Village and, therefore, the rejection of the application of the petitioner to issue community certificate to his son, on the ground that the origin of the petitioner is Gudalur Village, Nilgiris District, cannot be countenanced. To buttress this argument, he placed reliance on a decision of a Division Bench of this Court in C.Shanmugasundaram v. The Sub Collector, Thiruvallur District [Order dated 10.10.2013 passed in W.P.No.9284 of 2013], wherein referring to a Central Government letter dated 24.3.1994 clarifying that community certificates can be issued, if a person is residing in the same district for over five years, the respondent therein was directed to pass orders on the application of the petitioner therein.

5. He further contended that the community certificate issued to him on 04.06.1984 has not been set aside till date and in the light of the decision of the Hon'ble Supreme Court in State of Bihar v. Sumit Anand, (2005) 12 SCC 248, once the parents are having a valid community certificate, their children are also entitled to obtain a community certificate and hence, the order passed by the respondent is liable to be set aside.

6. On the other hand, the learned Government Advocate justified the reasons stated in the impugned proceedings and prayed for dismissal of the writ petition.

7. We heard Mr.V.Elangovan, learned counsel for the petitioner and Mr.S.N.Parthasarathy, learned Government Advocate for the respondent and perused the documents available on record.

8. A perusal of the documents filed in support of the writ petition reveals that the petitioner was issued a community certificate on 4.6.1984 to the effect that he belongs to "Kurumans Community", which is a Scheduled Tribe

Community. The said certificate was issued by the Tahsildar concerned and the same has till date not been set aside in a manner known to law.

9. Qua the competency of the Tahsildar to issue the said community certificate, it is apposite to refer to the decision of the Hon'ble Supreme Court in *R.Kandasamy v. The Chief Engineer, Madras Port Trust*, (1997) 7 SCC 505, wherein it is emphatically held as under:

"6. In our opinion the community certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.1989 is a good and valid community certificate for all purpose so long such as a certificate is not cancelled. The authorities cannot decline to take that into consideration."

(emphasis supplied)

10. In the light of the decision, referred supra, the respondent is bound to take into consideration the community certificate issued to the petitioner by the Tahsildar, who is a competent authority, at the relevant time. In any event, such community certificate was issued to the petitioner prior to 11.11.1989.

11. In *State of Bihar v. Sumit Anand*, (2005) 12 SCC 248, the Supreme Court upheld the order of the High Court directing the revenue authorities to issue community certificate to the children based on the certificates already issued to their father, grandfather, mother, and maternal uncle. The Supreme Court observed as under:

"6. We have perused the findings recorded by the Division Bench as well as the Single Judge of the High Court. In view of the fact that the respondent's father, grandfather, mother and maternal uncle had all been granted the certificate certifying that they belong to the "Gond" community, we see no reason to come to a conclusion other than the one arrived at by the High Court to the effect that the respondent was entitled to issuance of the caste certificate."

12. In yet another decision reported in *A.M.Sivakumar v. The Revenue Divisional Officer, Dharmapuri*, 2014 (2) MLJ 231, the Hon'ble Division Bench of this court has held as under:

"6. At the outset, it is to be noticed that the community certificates issued to the petitioner and his wife stating that they belong to 'Kurumans' (Scheduled Tribe) Community are valid and have not been cancelled in the manner known to law. If such valid community certificates are produced before the authority, the same should be taken into consideration for all purposes, even for granting community certificates to the children."

(emphasis supplied)

13. The Hon'ble Supreme Court as well as this Court, time and again, held that when community certificates issued in favour

of the parents of the applicants by a competent authority subsist, the authorities are bound to consider the same, unless the same are set aside by a higher authority, while issuing community certificate to their children, as children of a particular community derive their social status from their parents.

14. In the case on hand, it is not the stand of the respondent that the community certificate issued to the petitioner has been set aside by the competent authority. Therefore, in the light of the law enunciated in the decisions referred supra, more particularly, the decision in Sumit Anand case, in our considered opinion, the son of the petitioner is also entitled to such community certificate and the respondent cannot discredit the community certificate issued to the petitioner.

15. Anent the ground raised in the impugned order that the petitioner belongs to Gudalur Village, Nilgiris District, and, therefore, he has to obtain community certificate for his son from the said district and not from Tiruninravur Village, Thiruvallur District, it is apposite to refer to the documents which find place in the additional typed set of papers filed by the petitioner.

16. The Family Card appended shows that at least from the year 2005, the petitioner has been a resident of Thiruninravur Village, Thiruvallur District. Therefore, for at least the past 12 odd years, the petitioner has been a resident of Thiruninravur Village and that is borne out by records issued by the competent authority.

17. At this juncture, it would be appropriate to refer to the decision of this Court in C. Shanmugasundaram case, supra, wherein a Bench of co-ordinate strength, while dealing with a case in which the application seeking community certificate was rejected directing the petitioner therein to approach the authorities in a different District, held as under:

"3. The contention of the petitioner is that from the year 1959, the petitioner is residing in Poonamallee Taluk of Thiruvallur District. The Central Government also through a letter dated 24.3.1994 issued a clarification to the authority concerned to issue community certificate, if a person is residing in the same district for over five years.

4. In the light of the fact that as the petitioner is residing within the jurisdiction of the Sub Collector, Tiruvallur for over five years, the impugned order cannot be sustained and the matter is remitted to the respondent to decide the matter on merits and if necessary, get a report from the Sub Collector, Kancheepuram and pass orders, after hearing the petitioner, within a period of eight weeks from the date of receipt of copy of this order."

18. In the case on hand, the petitioner is better placed, as he is residing in the present village for over 12 years. The said proposition regarding the clarification issued by the Central Government, in our considered opinion, further fortifies the plea of the petitioner.

19. For the foregoing reasons, we allow the writ petition and set aside the impugned order in proceedings in Na.Ka.No.1008/2017/A5, dated 03.08.2017 passed by the respondent and direct the respondent to forthwith issue community certificate to the petitioner's son as prayed for. The said exercise shall be undertaken within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS-J)

//True Copy//

Sub Assistant Registrar

vs

To

The Revenue Divisional Officer,
Thiruvallur,
Thiruvallur District.

+ 1 cc to MR. S.Dorisamy, Advocate Sr.91486
+ 1 cc to MR.Government Pleader SR.90401

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(AR-J)
EU(29/01/2018)

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