

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.17929/2017

Minor Anusruthi
rep.by her Next friend & Maternal
grandfather, R.Saravanan. .. Petitioner

Vs

1.The District Collector
Villupuram District.
2.The Revenue Divisional Officer
Kallakurichi, Villupuram District. .. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned order in Na.Ka.No.A7/7296/2016 dated 16.06.2017 on the file of the 2nd respondent and quash the same and consequently direct the 2nd respondent to issue Scheduled Caste Community Certificate Hindu Malayali to the petitioner by considering the application dated 11.03.2017 within a reasonable time to be fixed by this Court.

For Petitioner : Mr.R.Neelakandan for
Mr.P.Rajavel

For RR 1& 2 : Mr.R.Vijayakumar, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.R.Vijayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents.

2 The deponent of the affidavit is the maternal grandfather of the minor petitioner and in the affidavit filed in support of this writ petition, would aver among other things that he belongs to Hindu Malayali Scheduled Tribe Community and his permanent place of abode is Palayapalapattu village, Kallipattu Revenue Village, Sankarapuram Taluk, Villupuram District and for the purpose of eking out his livelihood, he was constrained to shift his native place to Neyveli Township wherein he is residing with his daughter, viz., Vidyadharani, who is a divorcee, in terms of the decree dated 24.09.2013 made in HMOP No.23/2013 on the file of the Sub Court, Neyveli. He would further aver that he was issued with a Community Certificate bearing No.2810/78 dated 19.08.1978 by the Tahsildar, Kallakurichi, stating that he belongs to Kalrayan Hills Malayali community, which is recognised as Scheduled Tribe and his daughter / mother of the minor petitioner herein, viz., Vidyadharani, was

also issued with Community Certificates dated 23.07.1990 ; 23.12.1997 ; 18.12.2006 and 12.01.2007 respectively, stating that she belongs to Hindu Malayali Scheduled Tribe Community. The grandfather of the petitioner submitted an application seeking community certificate for his granddaughter-petitioner herein and the 2nd respondent herein vide impugned communication dated 16.06.2017, has rejected the same on the ground that since the father of the petitioner belongs to Kaveripuram village, Mettur Taluk, Salem District and that to evidence the permanent abode of the deponent, no documents have been produced and all the documents pertain to the place of residence as Kurinjipadi Taluk, Neyveli Township, Cuddalore District and challenging the legality of the same, the petitioner came forward to file the present writ petition.

3 The learned counsel for the petitioner has drawn the attention of this Court to G.O.Ms.No.61, Adi Dravidar and Tribal Welfare [ADW-10] Department, dated 04.04.2005 and would submit that though in terms of the said Government Order, the revenue authority of one District would not be competent to issue such a Certificate in respect of persons belonging to another District and in case of a person, born after the date of the notification of the relevant Presidential Order, the place of residence for the purpose of acquiring Scheduled Caste/Scheduled

Tribes status in the place of permanent abode of their parents, at the time of notification of the Presidential Order, under which they claim to belong to such a caste/tribe, the very same Department has issued yet another order in G.O.Ms.No.106, Adi Dravidar and Tribal Welfare [CV-1] Department, dated 15.10.2012, constituting the District Level Vigilance Committees/State Level Scrutiny Committee and the rigor of the above said Government Order has been somewhat watered down and therefore, there cannot be any impediment on the part of the revenue official of a particular District in which the petitioner is residing to make verification of the community status and act accordingly and without adhering to the same, the impugned order came to be passed and hence, prays for interference.

4 *Per contra*, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents would contend that admittedly, the petitioner's present place of residence is Kurinjipadi, Cuddalore District and to evidence the fact that the deponent of the affidavit – grandfather of the minor petitioner is having a permanent place of abode at Madura Palayapalapattu Village, Sankarapuram Taluk, no document has been produced and therefore, the 2nd respondent has rightly reached the conclusion to reject the application seeking issuance

of the Community Certificate for his granddaughter-minor petitioner herein and hence, prays for dismissal of the writ petition.

5 This Court has considered the rival submissions and also perused the materials placed before it.

6 A perusal of the typed set of documents would disclose that the deponent of the affidavit – grandfather of the petitioner has been issued with a Community Certificate dated 19.08.1978 and the mother of the minor petitioner, viz., Vidyadharani, has also been issued with Community Certificates dated 23.07.1990 ; 23.12.1997 ; 18.12.2006 and 12.01.2007 respectively stating that she belongs to Hindu Malayali Scheduled Tribe Community. It is not in serious dispute that the petitioner, out of the wedlock between Vidyadharani and Mr.Sivakumar, was born on 30.06.2009 and the Birth Register Extract issued by the Oulgaret Municipality, has also been enclosed in the typed set of documents.

7 It is also to be pointed out at this juncture that for the purpose of getting a Scheduled Tribe Community Certificate, one cannot be expected to remain in the permanent place of abode for the reason

that to eke out the livelihood, it is open to the concerned person to shift the place of residence also and such a right is also guaranteed under Article 19 of the Constitution of India.

8 If the concerned revenue official entertains any doubt as to the permanent place of abode of a concerned person or his community status, it is very well open to them to invoke G.O.Ms.No.106, Adi Dravidar and Tribal Welfare [CV-1] Department, dated 15.10.2012 to ascertain the said fact. However, in the case on hand, it has not been done so.

9 Therefore, in the light of the reasons assigned above, this Court is of the considered view that the impugned order warrants interference and the matter is to be remanded to the 2nd respondent for fresh consideration.

10 In the result, the writ petition is partly allowed and the impugned order dated 16.06.2017 passed by the 2nd respondent is set aside and the matter is once again remanded back to the 2nd respondent and it is open to the said official to ascertain the factual aspect as to the permanent place of abode and community status of the mother of the

petitioner as well the deponent of the affidavit – grandfather of the petitioner and pass appropriate orders in accordance with law as to the issuance of the Community Certificate in favour of the minor petitioner as expeditiously as possible and not later than eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner's grandfather, viz., Thiru.R.Saravanan. No costs.

[M.S.N., J.] [N.S.S., J]
14.07.2017

Index : No

Internet : Yes

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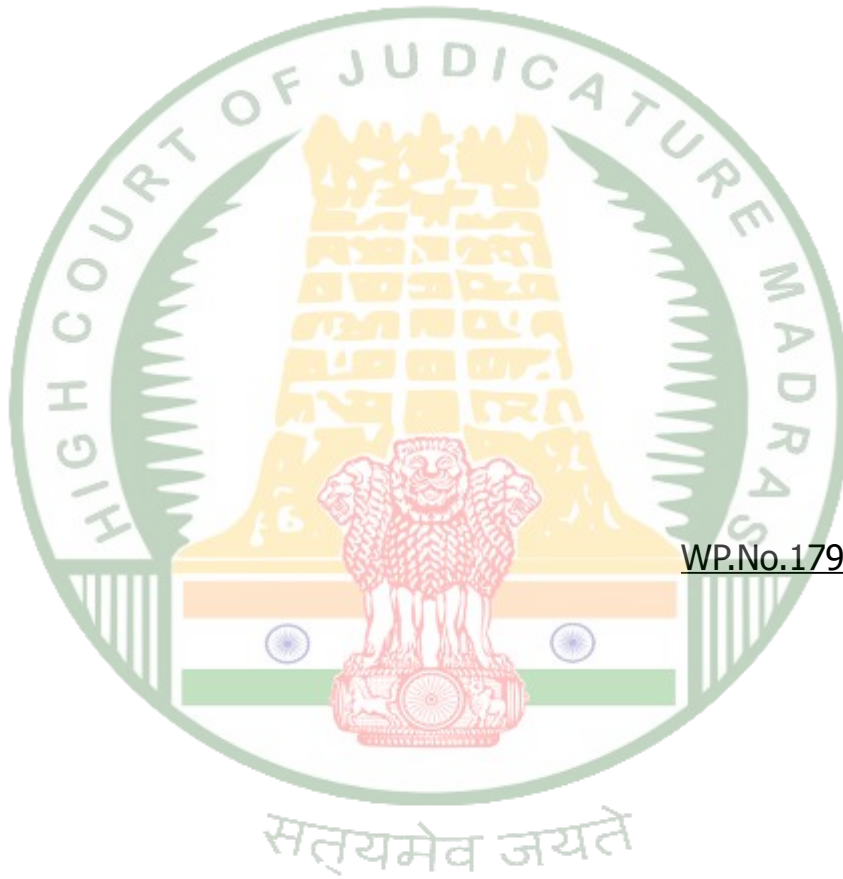
To

1.The District Collector
Villupuram District.

2.The Revenue Divisional Officer
Kallakurichi, Villupuram District.

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M.SATHYANARAYANAN, J.,
AND
N.SESHASAYEE, J.,
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