



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.20116 of 2017

V.Pandi

... Petitioner

Vs.

1. The District Dollector
Madurai District,
Madurai.

2. The Tahsildar
Madurai North,
Madurai District.

3. The Revenue Inspector
Chattirapatti,
Madurai North,
Madurai District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order passed by the second respondent in Muu.Mu.10851/2017/C2, dated 12.10.2017 and quash the same and direct the second respondent to issue the legal heir certificate to the petitioner.

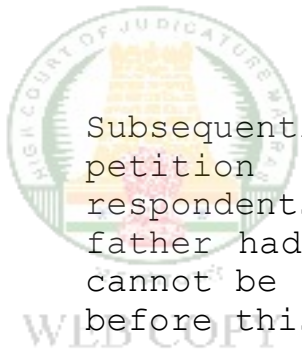
For Petitioner	: Mr.S.Chellapandian
For Respondents	: Mr.J.Gunaseelan Muthiah, Government Advocate

ORDER

This writ petition has been filed, seeking to quash the impugned order, dated 12.10.2017, issued by the second respondent. The petitioner also sought a consequential direction to the second respondent to issue the legal heir certificate to the petitioner.

2. Heard the learned Counsel appearing on either side.

3. It is the case of the petitioner that he intends to construct a house at his ancestral property. Therefore, he approached the Bank Officials for house loan and the Bank Officials asked him to produce the legal heir certificate.



Subsequently, he approached the respondents and submitted a petition for issuance of legal heir certificate, but the respondents rejected his claim, citing that the petitioner's father had two wives and without their consent, legal certificate cannot be issued. Aggrieved over the same, the petitioner has come before this Court, seeking to quash the same.

4. It is the specific contention of the learned Counsel for the petitioner that while applying for the legal heir certificate, he enclosed the consent letter obtained from the other legal heirs, viz, petitioner's mother and his step-mother. Without appreciating the said consent letter, the present impugned order came to be passed, which clearly shows the non-application of mind on the part of the authorities.

5. In support of his contention, the learned Counsel appearing for the petitioner has relied on the Judgment reported **in 2014(2) CWC 1 in P.Visalakshiamma Vs. The Director of Schools Higher Education, Chennai and others** [W.P.(MD)No.13372 of 2012, decided on 04.04.2014], wherein, this Court has held as follows:

"19. At the final stages of hearing, the counsel for the petitioner and the fifth respondent submitted that the parties have agreed to settle the dispute amicably by sharing the pension equally and entered into a memorandum of compromise and pleaded the same may be recorded and the Writ Petition may be closed.

20. In light of the above legal proposition, it is to be seen whether such a plea can be entertained by this court under Article 226 of the Constitution of India.

21. The parliament to protect the interest of women, who end up as a second wife or a concubine as a result of long living with a male companion, has enacted the Protection of Women from Domestic Violence Act, 2005. Section 2(f) of the said Act reads as follows:

"Domestic Relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family."

<https://hcservices.ecourts.gov.in/hcservices> 22. The relationship between the fifth respondent would certainly fall under the definition as the deceased N.Stanunthan Thambi and the 5th respondent



have lived together as husband and wife for 47 years now. The fact that he has declared the fifth respondent as his wife in the nomination column could itself be taken as public disclosure. The purpose of enacting such a law could only to make way for a maintenance for not only a legally wedded wife but also to a second wife or concubine. The concept of paying pension to the family members is to enable them to lead a decent life after the life time of the pensioner. Therefore, under the facts and circumstances, the memorandum of compromise is accepted and recorded. The respondent 1 to 4 are directed to disburse the pension in equal share to the petitioner and fifth respondent until the life time of both of them and in case of death of either one of them, the surviving party shall be entitled to full pension. With the above directions, the writ petition is disposed of. No costs."

6. Heard both sides and perused the documents placed on record.

7. A perusal of the typed set of papers would show that the parties have settled their disputes amicably, for giving legal heir certificate to the petitioner and to that effect an undertaking/consent letter had already been filed before the respondents.

8. Such being the case, the act of the respondents in rejecting the claim of the petitioner is not sustainable and therefore, the impugned order is liable to be set aside.

9. In the result, this writ petition is allowed. The impugned order dated 12.10.2017, passed by the second respondent is set aside and the matter is remitted to the second respondent, who in turn is directed to consider the claim of the petitioner and after perusing all the documentary evidences, pass appropriate orders, keeping in mind the order cited supra, after affording an opportunity of hearing to all the parties concerned, including the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar



To:

1. The District Dollector
Madurai District,
Madurai.

2. The Tahsildar
Madurai North,
Madurai District.

3. The Revenue Inspector
Chattirapatti,
Madurai North,
Madurai District.

+1cc to Mr.S.Chellapandian, Advocate Sr.No.92699

+1cc to Spl.Government Pleader Sr.No.93145

RM

VB/SKN/RSK/SAR4/28/12/2017/4P/6C

W.P (MD) No.20116 of 2017
13.12.2017