

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.14887 of 2017

K.N.Sundaresh (Deceased)

1.Meenakshi Sundaresh

2.K.S.Narayana Swamy

... Petitioners

(petitioners 1 and 2 are substituted in the place of the deceased K.N.Sundaresh vide order dated 17.09.2018 made in W.M.P.No.32245/2017)

Vs

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Revenue Department,
Ft. George,
Chennai 600 009.

2. The Tahsildar,
Mambalam Taluk,
Chennai 600 078.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of 2nd respondent in Mu.Mu. (E1)/8005/2016 dated 29.09.2016, quash the same as illegal and void and consequently direct the 2nd respondent to issue the legal heir certificate that the petitioner is the sole legal heir of deceased K.N.Venkatesh, his younger brother.

For Petitioners : Mr.A.Arumugam

For Respondents : Mr.V.Shanmuga Sundar,
Special Government Pleader

O R D E R

By consent of both parties, the writ petition is taken up for final disposal at the admission stage itself.

2.One K.N.Sundaresh, who was the original petitioner, has filed this writ petition, for quashing the communication in Mu.Mu.(E1)/8005/2016 dated 29.09.2016 sent by the second respondent and for consequential relief. According to him, his

father K.G.Narayanasamy and mother Vijayalakshmi Swamy died intestate on 06.11.1977 and 04.12.2001 respectively. His younger brother K.N.Venkatesh got married on 01.06.2005 with one Sheela Venkatesan; they have no issues; and due to difference of opinion, they got separated by a decree of divorce dated 03.12.2007 passed by the learned Principal Judge, Family Court, Bangalore, in HMOP.No.862 of 2007. Subsequently, his brother died on 04.08.2016 due to his illness. Since his brother has no class I legal heir, the original petitioner, being class II legal heir, made an application on 20.09.2016 to the second respondent requesting to issue legal heir certificate of the deceased brother. However, the second respondent rejected the said application, by order dated 29.09.2016, which is impugned herein.

3.After filing of this writ petition, the original petitioner K.N.Sundaresh died on 27.06.2017. As per the order made in WMP.No.32245 of 2017, his wife and son, being the legal heirs, were substituted in his place, as the petitioners 1 and 2 herein.

4.The learned counsel for the petitioners submitted that the original petitioner being class II legal heir, is entitled for legal heir certificate of his deceased brother, if no other direct legal heir is available, whereas, the second respondent refused to issue the same. In support of his submission, the learned counsel placed reliance on the earlier order of this Court dated 07.03.2016 in WP.No.37214 of 2015 [T.S.Renuka Devi, rep by her guardian and next friend K.Swaminathan vs. The Tahsildar, Mambalam, Guindy Taluk, Chennai-78], wherein, it has been observed as under:-

"5.Admittedly, Class I heirs of the said G.Parvathi predeceased her. It is not in dispute that the father of the petitioner is her only surviving legal heir. Therefore, as per the Schedule appended to the Hindu Succession Act, 1956, the petitioner being Class II legal heir, is entitled to succeed the property left out by the said Parvathi, if no other direct legal heir is available. In the enquiry, the respondent has also admitted the same, but he refused to issue a certificate to the petitioner. In my considered view, the order so passed by the respondent is not sustainable and hence, the same is liable to be set aside.

6.Accordingly, the writ petition is allowed and the order dated 05.12.2013 passed by the respondent is set aside. The petitioner

is permitted to submit a fresh application along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent is directed to conduct enquiry by affording an opportunity of personal hearing to the petitioner in accordance with law, within a period of six weeks thereafter. No costs. Consequently connected miscellaneous petition is closed."

Hence, the learned counsel sought a similar order in this writ petition also.

5. Heard the learned Special Government Pleader appearing for the respondents. He fairly submitted that the order impugned herein does not survive, in the light of the earlier order passed by this Court.

6. Considering the submissions made by the learned counsel on either side and also following the earlier order of this Court (cited supra), the impugned communication dated 29.09.2016 sent by the second respondent is set aside and the petitioners are directed to approach the 2nd respondent with a fresh representation within a period of two weeks from the date of receipt of a copy of this order. On receipt of such representation, the 2nd respondent shall consider the same, after conducting enquiry and pass appropriate orders, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioners as well as any of the interested parties, within a period of six (6) weeks thereafter.

7. Accordingly, this writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsa/rk

To

1. The Principal Secretary,
Revenue Department,
Fort St.George, Chennai 600 009.

2. The Tahsildar,
Mambalam Taluk,
Chennai 600 078.

+lcc to Mr.A.Arumugam, Advocate, S.R.No.64028
+lcc to the Government Pleader, S.R.No.64577

W.P.No.14887 of 2017

RJ(CO)

rrs 02/11/2018



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