IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2464 of 2018
and
WMP No.3002 of 2018

S.Shanthi ..Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Department of Revenue, Secretariat,
Chennai 600 009.

2.The Managing Director,
Tamil Nadu Slum Clearance Board,
No.5, Kamarajar Salai,
Chennai 600 005.

3.The Revenue Divisional Officer,
Tambaram,
Kanchipuram District.

4.The Tahsildar
Alandur Taluk.

5.Smt.Valli .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus directing the 3rd respondent to conduct and conclude the enquiry based on the petitioner's representation dated 9.3.2017 and pass suitable orders in accordance with law within time bound manner that may be fixed by this Court.

For Petitioner : Mrs..A.Priyadarshini

For Respondents: Mr.M.Karthikeyan
for R 1, 3 & 4
Addl.Government Pleader

Mr.R.Sivakumar for R 2

Mr.Alexis Sudhakar for R 5

O R D E R

The relief sought for in this writ petition is for a direction to direct the 3rd respondent to conduct and conclude the enquiry based on the petitioner's representation dated 9.3.2017.

2.The learned counsel for the writ petitioner states that the marriage between herself and her deceased husband late K.Sekar was solemnized at Arulmighu Vadapalani Andavar Thirukoil on 10.2.1992, and at the time of solemnization of marriage, the husband of the writ petitioner did not reveal the fact that he had already married the fifth respondent. By suppressing the earlier marriage, the husband of the writ petitioner married her as a second wife. The marriage was solemnized at Arulmighu Vadapalani Andavar Thirukoil, Vadapani, Chennai-600 026. The Deputy Commissioner/Executive Officer of the Temple issued a Certificate Of Marriage stating that the writ petitioner S.Shanthi and K.Sekar married on 10.2.1992. The Certificate of Marriage submitted by the learned counsel for the petitioner today shows that the marriage between the writ petitioner and her husband late K.Sekar was solemnized as per the Hindu Rights and Customs, and accordingly, two children born from and out of the wedlock between the petitioner and K.Sekar.

3.The grievance of the writ petitioner is that after the demise of her husband, the fifth respondent suppressing the fact regarding the second marriage and the children born from and out of the second marriage, and obtained a legal heir certificate from the Tahsildar, and the same is now disputed by the writ petitioner.

4.The learned counsel for the petitioner further states that the children born from and out of the wedlock between the writ petitioner and her husband, are also to be included as legal heirs in the legal heir certificate and the Tahsildar only by hearing the fifth respondent, issued the legal heir certificate which is in violation of law. This apart, the fifth respondent had suppressed the fact regarding the second marriage, and the children born from and out of the wedlock of the second marriage. The learned counsel for the petitioner states that the names of the writ petitioner as well as her children are also to be included as legal heirs in the legal heir certificate issued by the fourth respondent-Tahsildar. In this regard, the writ petitioner had also submitted an appeal before the third respondent-Revenue Divisional Officer, Tambaram, Kanchipuram District on 09.03.2017. However, the third respondent has not conducted any enquiry, providing an opportunity to the writ petitioner to establish her case. Thus, the writ petitioner and her children are deprived of legal right.

5.The learned counsel appearing on behalf of the fifth respondent states that the writ petitioner is not entitled for any relief as she claims that she is the second wife of late K.Sekar. This apart, the bona fide rights of the writ petitioner or her children cannot be decided by this Court, in view of the judgment in this regard. This apart, the fifth respondent has not suppressed any fact and, she was not even aware of the second marriage of her husband with the writ petitioner. Thus, there is no suppression on the part of the fifth respondent, while obtaining the legal heir certificate from the fourth respondent-Tahsildar.

6.Be that as it may, with regard to the above question of facts and circumstances, this Court is of an opinion that the same cannot be decided by this Court under Article 226 of the Constitution of India. The legal heir certificates are issued by the Competent Revenue Officials and in the event of any mistake or grievances, an appeal is to be filed before the higher authority. In the present case on hand, the writ petitioner has rightly preferred an appeal before the Revenue Divisional Officer, who is bound to conduct an enquiry in accordance with law. In this view of the matter, the third respondent-Revenue Divisional Officer, Tambaram, Kanchipuram District is directed to consider the appeal submitted by the writ petitioner on 9.3.2017, and pass orders on merits and in accordance with law by affording reasonable opportunity to all the parties concerned within a period of 12 weeks from the date of receipt of a copy of the order. The writ petitioner is directed to enclose a copy of the representation, and fresh representation if any, and the relevant documents along with the order passed in this regard.

7.Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

KP

To
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Represented by its Secretary,
Department of Revenue, Secretariat,
Chennai 600 009.

2.The Managing Director,
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No.5, Kamarajar Salai,
Chennai 600 005.

3.The Revenue Divisional Officer,
Tambaram,
Kanchipuram District.

4. The Tahsildar, Alandur Taluk.

+ 1 cc to Mr. R. Sivakumar, Advocate SR.59063
+ 1 cc to Government Pleader SR.59774
+ 1 cc to Mr.D. Alexissudhakar, Advocate Sr.62307

W.P.No.2464 of 2018

(CS-IX)
EU(07/09/2018)