

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.07.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.14125 of 2018

L.Athipathi

.. Petitioner

Vs.

The Revenue Divisional Officer,
Dharmapuri

...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus by calling for the records relating to the order of rejection passed in proceedings in Na.Ka.No.5030/2017/A4 dated 06.03.2018 on the file of the respondent quash the same and direct the respondent to issue Community Certificate to the Petitioner's children, viz., 1) A.Alaikadal, 2) Adalarasu 3) A.Elaiyanila that they belong to "Kurumans (ST) Community" based upon the Community Certificate already issued to the Petitioner, his family members and his close relatives.

For Petitioner : Mr.S.Doraisamy

For Respondent : Mr.K.Rajendra Prasad
Additional Government Pleader

ORDER

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

Heard both sides.

2. According to the Petitioner, he belongs to 'Kurumans Community', which is being classified as 'Scheduled Tribe Community'. He obtained a Community Certificate from the Respondent / Revenue Divisional Officer, Dharmapuri on 10.07.1997 that he belongs to Kurumans (ST) Community. His father, viz., Lakshman has also obtained a Community Certificate to the effect that he belongs to ST Community. As a matter of fact, the said certificates were issued to them after conducting proper enquiry and after due verification of necessary documents.

3. The version of the Petitioner is that his own brother, viz., L.Pushparaj obtained a Community Certificate from the Respondent and the said brother preferred an application before the Respondent / Revenue Divisional Officer, Dharmapuri seeking to issue Community Certificate to his children. In fact, his application was rejected by the Respondent, as against the Order of Rejection, his brother approached this Court by way of W.P.No.9512 of 2015 and this Court on 13.07.2015 had observed the following:

"3. We have examined all the documents enclosed with the writ petition. It is noticed that the certificates were issued in favour of the petitioner and his father and his brother by the competent officer. It is not the case of the respondent that the said certificates have been found as sham and bogus by the higher authorities. In that view of the matter, there is no reason to reject the application of the petitioner on aforesaid ground, which may not sustain in view of the proper certificates issued to the father, uncle and grandfather by the competent authority.

4. For the reasons stated above, we set aside the order passed by the respondent dated 09.02.2015 and direct the respondent to issue a necessary community certificate forthwith, preferably within a period of one week from the date of receipt of the copy of this order."

Subsequently, the Respondent complied with the order passed by this Court in W.P.No.9512 of 2015 on 04.08.2015 and issued a Community Certificate to his brother's children.

4. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Petitioner has three children, viz., A.Alaikadal (Studying 9th Standard), A.Addalarasu (Studying 6th standard) and A.Elaiyanila (Studying 6th standard). In reality, the school authorities had directed him to produce the Community Certificate to his children. Hence he preferred an application to the Respondent / Revenue Divisional Officer, Dharmapuri to issue Community Certificate to his children stating that they belong to 'Kurumans (ST) Community' and together with the said application, he had enclosed nearly eight documents and the same are as follows:

- (i) Petitioner's Community Certificate issued by the Respondent
- (ii) Petitioner's School Transfer Certificate
- (iii) Petitioner's Father's Community Certificate
- (iv) Petitioner's own brother's Community Certificate
- (v) Petitioner's close blood relatives Community Certificate
- (vi) Order in W.P.No.9512 of 2015 dated 13.07.2015
- (vii) Community Certificate of Petitioner's own brother's sons, Arulvel and Dhanasekaran
- (viii) Sale deed.

5. The Learned Counsel for the Petitioner proceeds to point out that the Respondent had forwarded the Petitioner's Application to the Thasildar, Pennagaram on 30.06.2017 to conduct an enquiry and submit a report. In view of the fact that no order was passed, the Petitioner was performed to prefer W.P.No.21191 of 2017 and this Court on 09.08.2017 had directed the Respondent to dispose of the Application of the Petitioner within a period of four weeks. However, the Respondent without applying his mind, passed an Order of Rejection on 06.03.2018 whereby and whereunder the claim of the Petitioner that they belong to 'Kuruman Community' was rejected, hence the Petitioner has preferred the instant Writ Petition before this Court.

6. In response, the Learned Additional Government Pleader for the Respondent submits that as against the Impugned Order of the Respondent dated 06.03.2018, the Petitioner has a viable, effective and efficacious remedy of approaching the District Collector, as per G.O.(Ms) No.147 Revenue [RA-3(2)] Department dated 17.03.2016 by preferring an Appeal. However, the Petitioner has not resorted to the availing of such remedy as mentioned in the said Government Order.

7. Considering the fact that the Petitioner has a viable, effective, efficacious and alternative remedy of preferring an appeal against the Impugned Order dated 06.03.2018, as per G.O.(Ms) No.147 Revenue [RA-3(2)] Department dated 17.03.2016, this Court without expressing any opinion on the merits of the matter and also not delving deep into the issue, at this stage, simpliciter directs the Petitioner to prefer an Appeal against the Impugned Order dated 06.03.2018 passed by the Respondent within a period of two weeks from the date of receipt of copy of this Order. Thereafter, if such an Appeal is preferred by the Petitioner before the District Collector, Dharmapuri, then, the District Collector, Dharmapuri / Appellate Authority shall take up the said Appeal and dispose of the said Appeal within a period of four weeks. The Appellate Authority is directed to provide necessary opportunity of hearing to the Petitioner and it is open to the Petitioner to raise all factual and legal pleas before the Appellate Authority and at the time of passing final orders in the Appeal, the Appellate authority shall advert to all the factual and legal pleas raised by the Petitioner and to pass a reasoned speaking order outlining the process of reasoning, in a qualitative and quantitative terms. If any personal hearing is required by the Petitioner, then, the Appellate Authority shall provide such an opportunity, of course, after adhering to the 'Principles of Natural Justice'.

8. Before parting with the case, this Court makes it pertinently clear that the Appellate Authority shall pass necessary orders in a free, fair, just, unbiased and dispassionate manner, of course, well within the time adumbrated by this Court.

With the aforesaid observations and directions, this Writ
Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

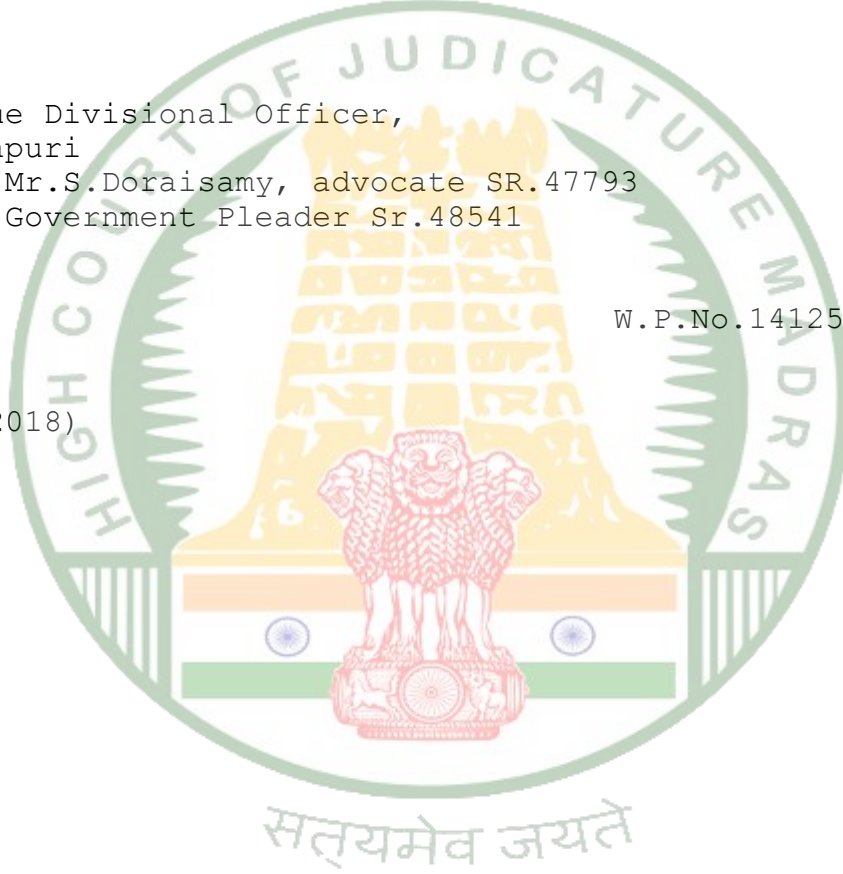
ssd

To

The Revenue Divisional Officer,
Dharmapuri
+ 1 cc to Mr.S.Doraisamy, advocate SR.47793
+ 1 cc to Government Pleader Sr.48541

W.P.No.14125 of 2018

SV(CO)
EU(03/08/2018)



WEB COPY