

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.24440 of 2018

K.Vallatharasu

... Petitioner

Vs

1. The District Collector,
o/o District Collector,
Thaiyar Kullam, Kanchipuram - 631 501

2. The Tahsildar,
O/o Pallavaram Taluk,
Pallavaram, Chennai - 600 043

... 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 relating to the impugned order passed by the 1st respondent in O.Mu.No.877/2018/A3 as illegal and quash the same and consequently, direct the respondents to issue the legal heir certificate in the name of the class II legal heirs to the petitioner herein as the enquiry has been completed.

For Petitioner : Ms.P.Kavitha

For Respondents : Ms.P.Rajalakshmi
Additional Government Pleader

O R D E R

The petitioner has come up with this writ petition calling for the records relating to the impugned order passed by the 1st respondent in O.Mu.No.877/2018/A3 as illegal and quash the same and consequently, direct the respondents to issue the legal heir certificate in the name of the class II legal heirs to the petitioner herein.

2. According to the learned counsel for the petitioner, his father, namely, Kannappan demised on 13.04.1981 and his mother demised on 22.12.1999 leaving himself, three brothers and one sister as legal heirs. However, all the legal heirs were married except his younger brother, namely, K.Mani, who died on 24.01.2017. Thereafter, subsequent to his demise, an

application along with relevant documents were submitted for legal heir certificate of K.Mani to the office of the District Collector, Pallavaram. In consequence, the said application was acknowledged and forwarded to the Taluk Office, Mangadu for necessary report. Thereafter, the District collector conducted an enquiry, paper publication was published and statements were recorded from the neighbours. Having completed the enquiry, despite the Circular No.11/17 dated 09.08.2017 by the Revenue Administration, Disaster Management and Mitigation Department, Chepauk, Chennai - 5, an order dated 20.06.2018 has been passed with a direction to approach the Court for necessary order. Left with no other option, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the issues involved herein has been elaborately dealt with by this Court in W.P.No.14887 of 2017 dated 17.09.2018 and ultimately, it has been in Paragraph No.4 held as follows:

"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 W.P.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"

Therefore, the learned counsel prayed for a similar order in this Writ Petition also.

4. Heard the learned Additional Government Pleader appearing for the respondents. She fairly submitted that the order impugned herein does not survive, in the light of the earlier orders passed by this Court.

5. Considering the submissions made by the learned counsel on either side and also following the earlier order of this Court [cited supra], the impugned order dated 20.06.2018 passed by the 1st respondent is set aside and the petitioner is directed to approach the respondents 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 respondents 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 petitioner as well as any of the interested parties within a period of six(6) weeks thereafter.

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

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
o/o District Collector,
Thaiyar Kullam, Kanchipuram - 631 501
 2. The Tahsildar,
O/o Pallavaram Taluk,
Pallavaram, Chennai - 600 043
- + 1 cc to Mrs. P. Kavitha, Advocate Sr.75974

W.P.No.24440 of 2018

SAI (CO)
EU(03/12/2018)