

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.4204 of 2017

1. V.Rukmani

2. V.Ranganayaki

3. V.Padma

...Petitioners

Vs.

The Tahsildar,
Mylapore Circle,
Chennai - 600 028.

...Respondent

Writ Petition 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 impugned order dated 30.01.2017 in O.Mu.No.A4/308/2017 of the respondent and quash the same and further direct the respondent to issue legal heir certificate to the petitioners within the time bound manner.

For Petitioners : Mr.Hari Radhakrishnan

For Respondent : Mr.D.Suriyanarayanan,
Additional Government Pleader.

O R D E R

This writ petition is filed challenging the order of the respondent dated 30.01.2017 refusing to issue legal heir certificate for the petitioners on the ground that the deceased has not left any Class-I heirs.

2. The petitioners claim that they are Class-II heirs. The very same issue was already dealt with by this Court in various writ petitions, out of which, one order was made in W.P.No.11721/2018 dated 31.07.2018, wherein it has been observed as follows:

4. Subsequently, this Court, in various orders passed in writ petitions, have been deprecating the practice of the Tahsildars in refusing to issue the certificate for class-II legal heirs. The orders passed in some writ petitions are extracted hereunder:-

(i). In M.Arumugam & Others vs. The Tahsildar, Madurai South, Madurai and another reported in CDJ 2013 MHC 6017, it has been held as follows:-

9.The petitioners are claiming themselves to be class II heirs. The Tahsildar pleads his inability to consider the case, as according to him, it would be very difficult to collect the details of the class II heirs. I am not inclined to accept the said submission.

10.The Revenue Department is having lower level officers, who are familiar with the people living in the concerned Village. There are revenue officers under the Tahsildar. There are also village officers functioning in the villages and they would be in a position to know the members of the family. The village Administrative Officer is expected to know each and every family of the village. He cannot plead ignorance about the relationship. The village Administrative Officer is the Revenue Co-ordinating Officer of the Revenue Department. The Village Administrative Officer must keep a close watch on the village and he should update his information. The problem of issuing a legal heir certificate to class II heirs could be resolved, in case a workable method is adopted by the revenue authorities. Since enquiry has to be made, the Tahsildar can direct the parties to produce birth certificates indicating the relationship. The Tahsildar can also conduct an enquiry in the village level through the Village Administrative Officer. In case, at a later point of time, it is turned out to be a false claim, it is open to the Tahsildar to cancel the certificate and even criminal action can be taken. The difficulty to identify the members of the class II heirs cannot be a reason to reject the request for issuance of legal heir certificates. Therefore I am of the view that the first respondent was not justified in passing the impugned order. Accordingly, the impugned order is quashed.

(ii). In W.P.(MD)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), 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.

(iii). In W.P.(MD)No.5586 of 2017 (R.Lokesh Kannan Vs. The District Collector, Madurai District and another), it has been held as follows:-

5.It is the specific case of the petitioner that his brother died as a bachelor and except the petitioner, there are no legal heirs, since his parents have already passed away. In the judgment referred by the learned counsel for the petitioner, this Court has held that if Clause-I heirs are not alive, Clause-II heirs are entitled to get the legal heirship certificate from the Competent Authority. Hence the application of the petitioner cannot be rejected merely on the ground that there is no direct legal heir of the deceased.

6.In view of the above facts, this writ petition is disposed of directing the petitioner to

submit a fresh application to the second respondent enclosing this order copy and the orders passed in the writ petition referred above, within a period of two weeks from the date of receipt of the copy of this order. On such receipt, the second respondent shall consider the petitioner's application and pass orders on merits and in accordance with law, in the light of the orders passed by this Court as stated supra within a period of six weeks thereafter.

5. Sections 8 and 9 of the Indian Succession Act, 1925, stipulate the mode of succession in expressive terms. As such, the respondents will not be justified in refusing the issuance of Legal heirship Certificate in favour of Class-II legal heirs, in the absence of Class-I legal heirs. When the law stipulates the mode of succession, the second respondent is duty bound to consider the same and conduct proper enquiry, in line with the order of the descendants, specified under the Succession Act or any other personal law for that matter.

3. In view of the above said order passed under similar circumstances, this Court is of the view that the petitioners are also entitled to the similar relief.

4. Accordingly, the Writ Petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for conducting proper enquiry and thereafter, consider the claim of the petitioners for issuing legal heirship certificate. Such exercise shall be done by the respondent within a period of four weeks from the date of receipt of a copy of this order. No costs

Sd/-
सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

The Tahsildar,
Mylapore Circle,
Chennai - 600 028.

+1cc to Mr.Hari Radhakrishnan, Advocate, S.R.No.86933

+1cc to the Government Pleader, S.R.No.86257

W.P.No.4204 of 2017

RSI (CO)
GSP (08/01/2019)



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