IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.08.2018
CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.29641 of 2003
and W.P.M.P.No.36164 of 2003

Palaniappan ... Petitioner

Vs

1. The Revenue Divisional Officer
Tirupathur.

2. The Tahsildar
Tirupathur,
Vellore District.

3. Appusamy

4. The Tahsildar
Tirupur,
Coimbatore District. ... Respondents

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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the file of the first and fourth respondents in proceedings in Mu.Mu.A2/6084/2003, dated 10.09.2003 and 3497/2001/A6, dated 20.04.2001 respectively and quash the same as illegal.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.K.Ravikumar, AGP for R1, R2 to R4
Mr.B.Jaganatham for R3
for Mr.E.Manokaran

O R D E R

The prayer sought for in this writ petition is for issuance of a writ of certiorari to call for the records on the file of the first and fourth respondents in proceedings in Mu.Mu.A2/6084/2003, dated 10.09.2003 and 3497/2001/A6, dated 20.04.2001 respectively and quash the same as illegal.

2. The short facts which are required to be noticed for the disposal of this writ petition are as follows :

(i) The petitioner one Palaniappan, s/o.P.Periyasamy obtained a Legal Heir Certificate from Tahsildar, Tirupattur, erstwhile North Arcot District on the ground that the petitioner was having two sisters by name one Mrs.Subathra and one Miss.Nalini. According to the petitioner, the said Nalini was spinster and she never married till her death, i.e., 01.04.2001. After the death of Nalini, according to the petitioner, he and his another sister are the legal heirs of the said Nalini and accordingly, the petitioner approached the Tahilsdar, Tirupattur and obtained the Legal Heir Certificate to that effect on 27.11.2002.

(ii) Meanwhile, one Appusamy claims to have married the said Nalini, the sister of the petitioner during her life time and in this regard, he seems to have claimed that, the said Nalini was her legally wedded wife and in support of the said contention, he after having produced photo copy of the family card, voters identity card, copy of the passport etc., before the Tahsildar, Tirupur and obtained the Legal Heir Certificate on 20.04.2001 certifying that, the said Appusamy alone was the legal heir of the deceased Nalini, i.e., one of the sister of the petitioner.

(iii) Appusamy, after coming to know of the fact that, the petitioner had subsequently got legal heirship certificate on 27.11.2002, certifying that, he and his another sister alone were the legal heirs of the deceased Nalini, had filed appeal before the first respondent, i.e., R.D.O, Tirupattur, Vellore District, seeking to cancel the said legal heir certificate, dated 27.11.2002 issued by the Tahsildar, Tirupattur. Based on the said appeal filed by the said Appusamy, the first respondent passed an order on 10.09.2003, of course after having received a report from the Tahsildar concerned, cancelling the legal heir certificate issued in favour of the petitioner, i.e., Palaniappan and one of his sister on 27.11.2002 by the Tahsildar, Tirupattur.

(iv) Aggrieved over the said order of the first respondent, dated 10.09.2003 and also challenging the legal heir certificate issued by the Tahsildar, Tirupur on 20.04.2001 in favour of one Appusamy, the petitioner has filed this writ petition with aforesaid prayer.

3. I have heard Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner and Mr.B.Jagannatham, learned counsel appearing for the third respondent and Mr.K.Ravikumar, learned Additional Government Pleader appearing for R1, R2 and R4.

4. Mr.V.Lakshminarayanan, learned counsel appearing for the petitioner has made a submission that, the first respondent Revenue Divisional Officer has no jurisdiction to cancel the legal heir certificate issued by the Tahsildar concerned as an appellate authority. In this regard, he would make submission that, if at all anyone is aggrieved by the issuance of legal heir certificate, the

course of action available for the aggrieved party is to approach the competent Civil Court and to get a declaration to that effect as to who is the legal heir of the deceased.

5. Since no mechanism is available to prefer an appeal in any statute to the first respondent, being the Revenue Divisional Officer, against the issuance of the legal heir certificate by the Tahsildar concerned, such appeal made by the said Appusamy ought not have been entertained by the first respondent.

6. The learned counsel appearing for the petitioner in this regard has relied upon an order of this Court passed by the learned Judge in W.P (MD).No.5308 of 2017, dated 27.03.2017. In that order, the learned Judge, after having considered a similar issue, had directed the parties to approach the competent Court for appropriate decision, as the revenue authorities are not the proper persons or authorities to decide who is the legal heir of whom.

7. The learned counsel appearing for the petitioner would also submit that, the order passed by the first respondent, which is impugned herein, can also be successfully assailed on the ground that, the petitioner was not heard by the Revenue Divisional Officer before passing the impugned order canceling the issuance of the legal heir certificate issued by the Tahsildar, Tirupattur. He would further submit that, any order passed by the revenue authority behind the back of the affected person will not have any bearing or effect. In this regard, the learned counsel appearing for the petitioner relied on the Judgment reported in 1998 Writ L.R. 347 in the matter of Thirumurthy, E. and another v. Collector of Chennai, etc., wherein paragraph 8 of the said order has been heavily relied upon by the learned counsel, which reads thus :

> "8.Though the grievance of the petitioners are genuine, this Court holds that it need not entertain this writ petition as the legal heirship certificate issued by the Tahsildar, the second respondent is of little consequence, and it will not bind the writ petitioners or other legal heirs of the deceased Ezhumalai Naicker, and it would in no way affect the claims or rights of the legal heirs of the deceased Ezhumalai Naicker. It is made clear that the certificate issued by the second respondent behind the back of the petitioners is not only invalid but also will not decide the rights of the parties."

8. By making the said submissions, the learned counsel appearing for the petitioner would urge that, if at all there had been a dispute about the claim of legal heirship for the deceased Nalini, who is the sister of the petitioner, the same can very well be resolved only by a competent Civil Court, of course after having ascertaining the evidences produced by both sides, i.e., the writ petitioner as well as the individual, one Appusamy, who claimed to be the husband of the said Nalini and unless the competent Civil Court makes any decision by way of declaratory relief, the dispute arises with regard to the legal heirship of the deceased could not be resolved by issuance of legal heir certificate by two different Tahsildars.

9. In this regard, the learned counsel for the petitioner would further submit that, by virtue of the order of the Revenue Divisional Officer, the issuance of the legal heir certificate in favour of the petitioner alone has been cancelled, thereby the legal heir certificate issued in favour of the third respondent, by Tahsildar, Tirupattur has been permitted to stay. Therefore by the impugned order, the Revenue Divisional Officer, i.e., the first respondent has not only done injustice to the petitioner as without hearing him, the impugned order has been passed, but also indirectly allowing the third respondent to enjoy the fruits pursuant to the legal heir certificate, dated 20.04.2001 issued in favour of the individual, namely Appusamy, who claimed to be the husband of the sister of the petitioner, namely, Nalini. Therefore such kind of illegality cannot be perpetuated, that is the reason why the petitioner has collectively challenged the said legal heir certificate issued in favour of the said Appusamy also, who is the third respondent herein.

10. Per contra, the learned counsel appearing for the third respondent would submit that, it is a case of the third respondent that he married the said Nalini, the sister of the petitioner and since he is the husband of the Nalini and after the demise of Nalini on 01.04.2001, the third respondent alone will be the legal heir and he would exclude the other heirs, namely the petitioner or other sister. Therefore there was every justification on the part of the Tahsildar, Tirupur, who gave the legal heir certificate and therefore that cannot be linked with the legal heir certificate issued by the Tahsildar, Tirupattur, which was a subsequent event without taking note of the earlier legal heir certificate issued by the first respondent.

11. The learned counsel appearing for the third respondent would further submit that, there is also express provision to make an appeal against the order of the Tahsildar, who passed the unsustainable legal heir

certificate, by way of appeal to Revenue Divisional Officer. In normal parlance, because of the hierarchy in the cadre of service in the revenue department, any order passed by the Tahsildar shall be appealed to his superior, who is none other than the Revenue Divisional Officer concerned. Therefore the Revenue Divisional Officer can very well act as an appellate authority. Merely because there is no express provision available, to make an appeal against the first respondent to act as an appellate authority, the power which is inherently vested in the office of the Revenue Divisional Officer concerned, cannot be denied.

12. Therefore the learned counsel appearing for the third respondent would submit that, the order impugned on the ground of jurisdiction as wall as on factual matrix will be fully justifiable and sustainable and hence it does not require any interference from this Court.

13. Also Mr.K.Ravikumar, learned Additional Government Pleader appearing for the official respondents has brought to the notice of this Court that, recently Government issued a circular on 09.08.2017 in Circular No.11/17 RC No. RA5(3)/180/2017 by the Revenue Department, issuing a set of guidelines to be followed by revenue people in case of issuance of legal heir certificate. Such system of issuance of legal heir certificate by that circular since had been transferred into an online method of issuance.

14. In the said circular para 8 deals with the appeal provision which reads thus :

> "8. Appeal provision :
> If any legal heir disputes the issued legal heir certificate, an appeal petition shall be filed to the respective Revenue Divisional Officer within a period of one year from the date of issue of the certificate for making alterations, corrections - deletions or inclusions."

15. By relying upon the said provision, the learned Additional Government Pleader would submit that, though such an express provision was not available in any literature empowering the Revenue Divisional Officer concerned to act as an appellate authority, by virtue of the issuance of the circular, dated 09.08.2017, the Revenue Divisional Officer can act as an appellate authority.

16. However, the learned Additional Government Pleader would fairly submit that, the said circular will have a prospective effect and therefore, the past cases before issuance of the said circular whether can be brought

under the purview of the said circular itself is doubtful.

17. Therefore, the learned Additional Government Pleader would further submit that, since there has been a dispute between the petitioner and the third respondent to claim the legal heir certificate of the deceased Nalini, the said issue can very well be decided by the competent Civil Court and in this regard, both parties can approach the Civil Court for seeking declaratory relief. In that regard, that will be taken as basis for issuance of legal heir certificate and till such time the legal heir certificate issued by both the Tahsildars need not be acted upon.

18. I have considered the said submissions made by the learned counsel appearing for the respective parties as well as the learned Additional Government Pleader appearing for the official respondents.

19. As has been rightly pointed out by the learned counsel appearing for the petitioner, there had been a dispute over the claim of the legal heir certificates of the deceased Nalini, who is none other than the sister of the petitioner. At the same time, the third respondent claimed that, he is the legally wedded husband of the said Nalini and on that strength, he already obtained the legal heir certificate from the Tahsildar, Tirupur and on that strength, since the third respondent filed an appeal before the first respondent, who acted as an appellate authority, by which, he set aside the legal heir certificate issued in favour of the petitioner.

20. When the first respondent acted upon by passing the impugned order, he had, no doubt, acted as an appellate authority. However, as has been rightly pointed out by the learned counsel for the petitioner, there was no express provision available in any Act or Rule and not even a Government Order has been issued in this regard, empowering the Revenue Divisional Officer concerned, to act as an appellate authority against the order passed by the Tahsildar concerned in issuance of the legal heir certificate.

21. That is the reason why recently in the year 2017, the Government has come forward to issue a Circular No.11/2017, as referred to above only on 09.08.2017, wherein the Revenue Divisional Officer's are made as an appellate authority, before whom if any legal heir certificate dispute arose, appeal can be preferred against the order passed by the Tahsildar and such appeal shall be filed within a period of one year from the date of issuance of such orders by the Tahsildar concerned.

22. On perusal of the said appeal provision made in the Circular, it became quite clear that, the said circular will have only prospective effect, i.e., only from the date of circular and the limitation period is also fixed one year from the date of issuance of the order.

23. Therefore, the legal heir certificate issued either to the petitioner or to the third respondent cannot be agitated by way of statutory appeal or appeal, pursuant to the Circular, dated 09.08.2017 before the Revenue Divisional Officer concerned as an appellate authority. Therefore the appeal filed by the third respondent before the first respondent against the legal heir certificate issued to the petitioner could not have been decided as an appeal by the first respondent, as such power was not available to the first respondent at that time.

24. The only course of action, which would have been available to the first respondent was that, he could have very well directed the parties to approach the competent Civil Court to establish their right. Instead of doing the right thing, the first respondent have not only entertained the appeal, but also gave its finding by cancelling the legal heir certificate issued in favour of the writ petitioner, that too without hearing him. Therefore this Court has no hesitation to hold that, for all these reasons, the impugned order passed by the first respondent would not be sustainable.

25. In so far as the challenge made against the legal heir certificate issued by the Tahsildar, Tirupur in favour of the third respondent is concerned, the said certificate was issued without verifying the fact that the deceased Nalini had one brother and one sister and also without verifying the fact that, whether the claim made by the third respondent that he married the said Nalini and whether the said marriage has been solemnized in the eye of law. Without verifying these aspects, since the said certificate seems to have been given by the Tahsildar, Tirupur, this Court holds that, such certificate need not be acted upon and therefore the same shall be directed to be kept in abeyance.

26. In the result, the following order is passed.

(i) The impugned order passed by the first respondent, in Mu.Mu.A2/6084/2003, dated 10.09.2003 is quashed.

(ii) Resultantly, the legal heir certificate issued by the Tahsildar, Tirupattur in favour of the petitioner since get revived, however, the same shall not be acted upon and that shall be kept in abeyance.

(iii) Equally the legal heir certificate issued in the year 2001 by the Tahsildar, Tirupur in favour of the third respondent shall also be kept in abeyance.

(iv) The parties are at liberty to approach the competent Civil Court to establish the right on the claim of the legal heirship of Nalini and once such a decision comes from the Court by way of declaratory relief, the respective parties shall act accordingly.

27. With these observations and orders, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To
1. The Revenue Divisional Officer
Tirupathur.

2. The Tahsildar
Tirupathur,
Vellore District.

3. The Tahsildar
Tirupur, Coimbatore District.

+1cc to Mr.B.Jaganatham , Advocate SR.No. 57338
+1cc to Mr. V.Raghavachari, Advocate SR.No. 56714
+1 CC TO GOVERNMENT PLEADER SR.NO. 57233

W.P.No.29641 of 2003

A.SK(04/03/2019)