



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23931 of 2018

R.Bose

... Petitioner

Vs.

The Thasildar,
Thiruparankundram Taluk,
Thiruparankundram,
Madurai District.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, to direct the respondent to consider the petitioner's representation dated 06.09.2018 on the basis of the order passed by this Court in W.P(MD)No.18215 of 2016, dated 17.10.2016 within a time frame fixed by this Court.

For Petitioner : Ms.G.Innisai

For Respondent : Mr.V.Anand,
Government Advocate.

ORDER

The petitioner has filed the present writ petition seeking a Writ of Mandamus, to direct the respondent to consider his representation dated 06.09.2018 on the basis of the order passed by this Court in W.P(MD)No.18215 of 2016, dated 17.10.2016.

2.The case of the petitioner is that he has three brothers, namely, R.Rajamanickam, R.Chinnathambi and R.Paramasivam and they are the sons of Ramasamy Pillai. The petitioner's elder brother, namely R.Rajamanickam, died while he was a bachelor and his brother, namely R.Chinnathambi got married with one Gnanam and they had no issues. The said Chinnathambi died on 30.03.2015, leaving behind his wife Gnanam as his legal heir. Subsequently, the said Gnanam died on 02.02.2017. Since both Chinnathambi and Gnanam are died intestate, the petitioner and his another brother, namely R.Paramasivam, who are the class II heirs of deceased Chinnathambi, are the legal heirs of him.

3. The petitioner further states that in order to get legal heir certificate, he has submitted an application before the respondent on 06.12.2017 and the respondent also issued a memo, dated 01.02.2018, directing the petitioner to approach the civil



Court. After receipt of the memo, the petitioner has sent a representation, dated 06.09.2018 along with the copy of the order passed by this Court in W.P(MD)No.18215 of 2016, which is squarely applicable to his case.

4. The petitioner further submits that even though this Court has passed an order to the respondent to consider the case of the petitioner, which is squarely applicable to his case, the respondent has rejected the claim of the petitioner. Hence with no other alternative remedy, the petitioner has approached this Court by way of filing this Writ Petition.

5. The learned Government Advocate appearing for the respondent submitted that the respondent has no right to issue legal heir certificate to class II heirs, who are not the direct authority, the petitioner should approach the civil Court for getting appropriate orders.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

7. Admittedly, the petitioner and his brother R.Paramasivam are not the class-I legal heir of the deceased Chinnathambi and Gnanam, being the brothers, they are only class-II legal heir. However, as claimed by the petitioner, the deceased Chinnathambi has no legal heir except his brothers. Since in the absence of any other class-I legal heir, there is no impediment for the respondent/Thasildar to issue legal heir certificate as per the guidelines issued by the Government, which reads as follows:-

"1. As per the present procedure the Tahsildar has to issue the legal heirship certificate to the direct heir.

2. The Tahsildars should avoid issuing legal heirship certificate in respect of the following items mentioned below, apart from the direct heirs and the applicants should be instructed to get the certificate through the civil Court.

a. If there are more than one wife/husband for the deceased, and even if they have children and if it is evident that there is a partition dispute among them.

b. When there is a condition to issue heir certificate for the person, who has left the family for seven years by deeming that person to be dead.

c. If a person is residing in other District, and does not have the residence within the limits of the taluk and if he is not in possession of a house or property, and does not attend the enquiry to give his



statement to the Tahsildar.

d. If the deceased does not have children and brings up other children."

8. Accordingly, as per the guidelines, if the petitioner comes under the above said four guidelines issued, the Thasildar is instructed to avoid issuing legal heir certificate. If the petitioner does not come under the above said four guidelines issued, the Tahsildar can issue legal heir certificate. Since the petitioner does not come under the above said four guidelines issued, the respondent/Tahsildar is directed to consider the application of the petitioner and pass appropriate orders in accordance with law, after conducting an enquiry and also affording an opportunity to the petitioner concerned, within a period of six weeks from the date of receipt of copy of this order.

9. With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Thasildar,
Thiruparankundram Taluk,
Thiruparankundram,
Madurai District.

+1cc to Special Government Pleader, SR.No.100106
+1cc to Mr.G.Innisai Advocate in SR.No.10059

W.P(MD)No.23931 of 2018
12.12.2018

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