



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.16708 of 2018

Sudailaimuthu

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Thasildar,
Veerakeralampudur Taluk,
Tirunelveli District.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in o.Mu.A1/6131/17 dated 19.12.2017 passed by the second respondent and quash the same and consequently direct the second respondent to issue legal heir certificate to the petitioner.

For Petitioner : Mr.S.Selvakumar

For Respondents : Mr.V.Anand
Government Advocate

O R D E R

The petitioner's grand son died on 06.04.2018. The petitioner herein is the surviving Class-II legal heir of Muthuselvam. In this connection, he had made an application to the second respondent herein, on 01.11.2017, seeking for Legal heirship Certificate and by an order dated 19.12.2017 in O.Mu.A1/6131/2017, the second respondent rejected the petitioner's application, on the ground that he was not the direct heir of the deceased and hence, directed him to approach the Civil Court seeking for necessary relief. Challenging the said order dated 19.12.2017, the present writ petition has been filed.

2. Before analyzing the validity of the impugned order, it would appropriate to trace the powers of the second respondent in refusing to issue a Legal heirship Certificate to the Class-II legal



heirs. There is no provision under the Registration of Birth and Deaths Act, 1969, or any other Act or Rules, empowering the Revenue Authorities to issue a Legal heirship Certificate. In the year 1981, a one man committee in District Revenue Administration suggested delegation of powers to the Tahsildar/Deputy Tahsildar for issuance of a Legal heirship Certificate and while accepting the recommendation, the Revenue Department in G.O (Ms) No.2906, dated 04.11.1981, had empowered the jurisdictional Tahsildar/Deputy Tahsildar to issue Legal heirship Certificate. Subsequently, by Letter (Rt) No.1534, dated 28.11.1991 issued by the Revenue Department, certain conditions were imposed for issuance of Legal heirship Certificate, wherein one of the conditions was that the Tahsildar should refrain from issuing the Legal heirship Certificate to Class-II legal heirs with a further direction to advise the applicant to approach the Civil Court seeking for remedy. Certain other guidelines were also appended to the said letter dated 28.11.1991.

3.It is submitted that in view of the Letter (Rt) No.1534, dated 28.11.1991, the authorities had been refusing to issue Legal heirs Certificate for Class-II legal heirs and advising them to approach the Civil Court. The impugned order is one such order relying upon Letter (Rt) No.1534, dated 28.11.1991.

4. 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:-

5.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.

6.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:-

7. 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.

8. 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 others), it has been held as follows:-

9. 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 Class-I heirs are not alive, Class-II heirs are entitled to get the legal heirship certificate from the Competent Authority. Hence the



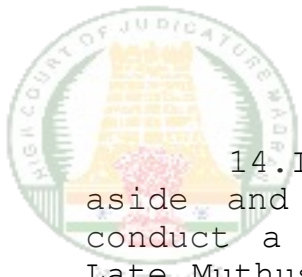
application of the petitioner cannot be rejected merely on the ground that there is no direct legal heir of the deceased.

10. 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.

11. 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 descendancy, stipulated under the Succession Act or any other personal law for that matter.

12. When the law specifies the mode of succession, there is no impediment on the part of the Tahsildar to issue Legal heirship certificate as per the prescribed mode of succession. Nevertheless, in cases, where there are serious rival claims for the heirships, which cannot be considered, on the basis of the statement of the claimants and which necessarily requires to be established through proper oral and documentary evidences, it would be appropriate, to refer such parties to the Civil Court of law. Such an exercise however should be made only when the authority is satisfied that there is a rival claim for heirships or the relationship of the heirs with the deceased is disputed. In all other cases, the authorities are bound to issue Legal heirship Certificate for the Class-II legal heirs also. It is needless to point out that the certificates thus issued should be preceded by a proper enquiry by the Revenue Authorities.

13. In the instant case, the respondents are not justified in denying the legal heirship certificate of late Muhtuselvam only on the ground that he did not have direct heirs. It is rather unfortunate that even inspite of the several orders of this Court directing the Tahsildar/Deputy Tahsildar to issue Legal heirship Certificate for the Class-II heirs also, the respondents have chosen to rely upon an outdated letter of the year 1991 and has been rejecting such applications.



14. In the result, the impugned order dated 19.12.2017 is set aside and consequently, the respondents herein are directed to conduct a proper enquiry and issue Legal heirship Certificate of Late Muthuselvam to the petitioner, if he is not otherwise entitled to. Such an exercise shall be completed within a period of four weeks from the date of receipt of copy of this order. This Writ Petition is allowed accordingly. No costs.

Sd/-
Assistant Registrar (WRIT)

/True Copy/

Sub Assistant Registrar (CS-I)

To:

1. The District Collector,
Tirunelveli District,
Tirunelveli.

2. The Thasildar,
Veerakeralampudur Taluk,
Tirunelveli District.

+1cc to Mr. S. SelvaKumar, Advocate in SR No. 76025
+1cc to The SPL Government Pleader in SR No. 75909

W.P. (MD) No. 16708 of 2018

DS (NM) /RSK/SAR 1/24.09.18/5P/5C