

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.42244 of 2016

and

W.M.P.Nos. 36141 of 2016 & 4763 of 2017

K. Devaraj

... Petitioner

Vs.

1. The District Collector,
Erode District, Erode.

2. Tahsildar,
Erode Taluk, Erode,
Erode District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing 2nd respondent to issue legal heir certificate in the name of Om Praveen Kumar and Sri Iswarya for the petitioner's brother K. Durairaj.

For Petitioner : Mr. C.Prakasam

For respondents : Mr. K.K. Ramesh,
Government Advocate

ORDER

This writ petition has been filed seeking a direction to the second respondent to issue a legal heir certificate in favour of one Om Praveen Kumar and Sri Iswarya for the deceased one K. Durairaj.

2. According to the petitioner, his brother K.Durairaj was working as an employee in BSNL and he was a divorcee. During his life time, the said Durairaj adopted the petitioner's children Om Praveen Kumar and Sri Ishwarya as per customs and the adoption was also duly registered on 24.11.2008 before the Registrar, Erode. After the adoption, both the children were

living with the deceased Durairaj and Ration card and Aadhar Card were also issued to them showing the name of K.Durairaj as their father. Even in the LIC policy of the deceased Durairaj, the adopted children names were shown as nominees, and he died on 25.04.2016 due to ill-health. Thereafter, the petitioner approached the second respondent to issue legal heir certificate based on the adoption. But, that was not considered and hence, the present writ petition has been filed.

3. The learned counsel for the petitioner would submit that the children were legally adopted by the petitioner's brother Durairaj and the same was also duly registered. Hence, there is a presumption under Section 16 of the Hindu Adoption and Maintenance Act 1956. That apart, in a circular issued by the Government dated 24.09.2019, the Government has issued a direction to the concerned Tahsildar to issue legal heir certificate in favour of adopted children with a valid adoption deed, which is duly registered as per the Hindu Adoption and Maintenance Act. Hence, there is no legal impediment to the Tahsildar to issue the certificate.

4. Per contra, the learned counsel appearing for the respondents would submit that even though the adoption was registered, now the second respondent has received objection from the sister of the deceased Durairaj for issuing the legal heir certificate to the children of the petitioner. Hence, the second respondent is not in a position to pass any orders.

5. I have considered the rival submissions and perused the materials available on records carefully.

6. The petitioner claims that there is a valid adoption by the deceased Durairaj and the adoption was also duly registered before the Competent authority. Based on the adoption the petitioner is seeking legal heir certificate and the petitioner has also produced the copy of the adoption deed. Even though there is a presumption under Section 16 of the Hindu Adoption and Maintenance Act in favour of the adopted children, now, it is stated that the sister of the petitioner has raised objection for issuing legal heir certificate. In the above circumstances, the second Tahsildar is directed to conduct an enquiry and pass suitable orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order, after giving opportunity to the petitioner as well as the objectors, by considering the evidence submitted by the parties and also the circular issued by the Government in Rc.No.RA.5(3)/180/2017 dated 24.09.2019 .

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mrp

1. The District Collector,
Erode District, Erode.

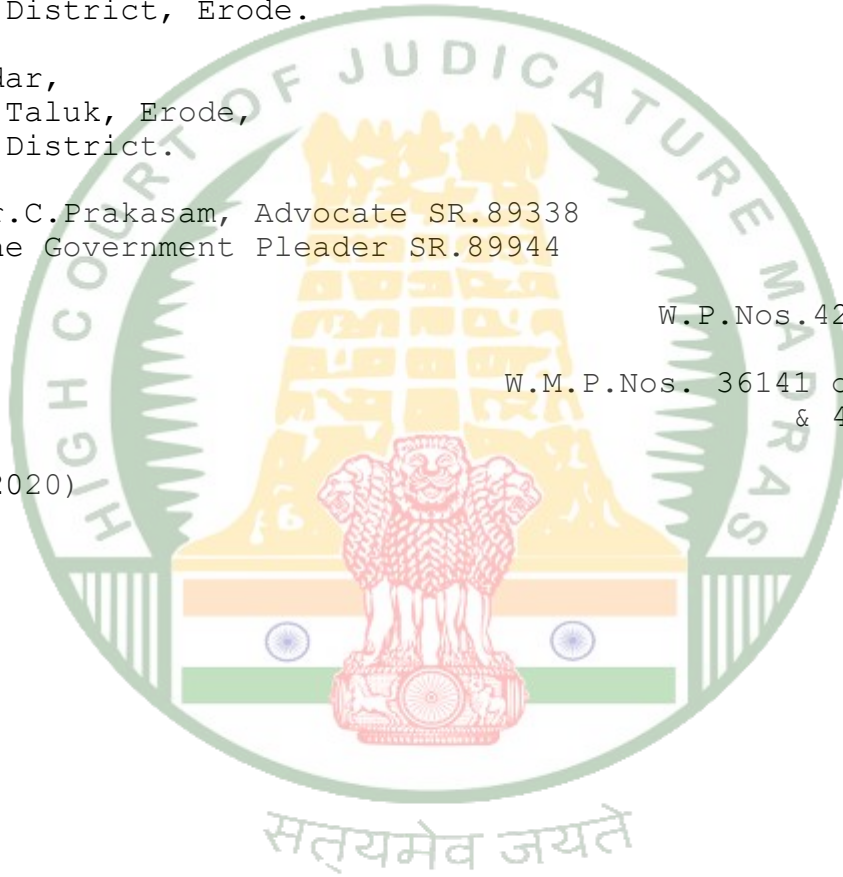
2. Tahsildar,
Erode Taluk, Erode,
Erode District.

+1cc to Mr.C.Prakasam, Advocate SR.89338
+1cc to The Government Pleader SR.89944

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GMR(CO)
CB(07/01/2020)



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