



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P (MD) No.24676 of 2019

and

WMP (MD) No.21322 of 2019

Mr.Naziruddin

... Petitioner

Vs.

1.The District Collector,
Trichirappalli District.
Trichy.

2.The Revenue Divisional Officer,
Thottiyam Revenue Division,
Musiri, Trichy District.

3.The Tahsildar,
Thottiyam Taluk,
Thottiyam (Town)
Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified Mandamus calling for the records pertaining to the 3rd respondent Taluk Office made in the proceedings in O.Ms.No.1/4648/2019, dated 22.10.2019 and quash the same and direct the respondents 1 to 3 to issue the required legal heirship certificate to the petitioner, based on his application dated 25.09.2019 within the time frame.

For Petitioner : Mr.A.Ananda Raj for
Mr.P.Nepolean

For Respondents : Mr.P.Kannithevan
Additional Government Pleader

ORDER

Mr.P.Kannithevan, learned Additional Government Pleader takes notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission itself.

2.The petitioner has approached the respondents for issuance



of legal heir certificate, which was refused by the third respondent, Tahsildar on the ground that the petitioner is not a Class - I legal heir. Challenging the same, the petitioner is before this Court.

3.This Court in **WP(MD)No.15901 of 2018 [N.R.Raja and others Vs. The Tahsildar, Madurai South]**, by its order dated 03.08.2018, directed the respondent therein to grant legal heir certificate to Class - II legal heirs also. In the said decision, the issue with respect to issuance of legal heir certificate to Class - II legal heir has been elaborately dealt with. The relevant portion is extracted hereunder:

"2.This Court had an earlier occasion to deal with an identical issue in W.P(MD) No.11721 of 2018, on 31.07.2018, and the relevant portion reads as follows:-

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. 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 Class -I heirs are not live, 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.

4. The same view has been followed in another **WP (MD) No. 4316 of 2019 [Kamatchi Vs. The Tahsildar, Kulathur Post & Taluk]**, wherein, this Court, by its order dated 24.04.2019, has held as follows:



"2. It has already been held by the Madras High Court vide order dated 01.08.2018 in W.P.(MD)No.15211 of 2018 as follows:-

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"6. When the law specifies the mode of succession, there is no impediment on the part of the Tahsildar to issue Legal heirship certificate as prescribed in the 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."

3. The respondent is therefore not justified in declining to issue the legal heir certificate on the ground that the applicant is only the sister of the deceased and not the Class- I legal heir.

5. In view of the above decisions, the impugned order passed by the third respondent, Tahsildar, dated 22.10.2019 is set aside. When an application is filed seeking legal heir certificate, the factum of Class - I heir or Class - II heir has to be inferred by the village officers in the area, where the applicant resides by way of conducting a field verification. After enquiry, if it is found that the applicant is the legal heir, he should be issued with the legal heir certificate.

6. At this juncture, the learned Additional Government Pleader appearing for the respondents would contend that the third respondent would conduct a field verification in the area, where the applicant resides. If it is found that some other Class - II heirs are available to the deceased Abdul Basheed, there is no impediment to issue legal heir certificate including all the legal heirs. The third respondent shall issue legal heir certificate after enquiry, within a period of four weeks from the date of receipt of a copy of this order.



7.The writ petition is allowed accordingly. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

vs

To

- 1.The District Collector,
Trichirappalli District.
Trichy.
- 2.The Revenue Divisional Officer,
Thottiyam Revenue Division,
Musiri, Trichy District.
- 3.The Tahsildar,
Thottiyam Taluk,
Thottiyam (Town)
Trichy District.

+1CC TO MR.F.NEPOLEAN, Advocate Sr. No.100432
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.100562

W.P. (MD)No.24676 of 2019

DB(CO)

TR(27.11.2019) 6P 6C