

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.12.2020
CORAM
THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA
WP.No.16872 of 2020
and W.M.P.Nos.20929, 20932 & 20933 of 2020

1.K.Navamani

2.Minor N.Sugavanam

3.Minor N.Prakash

both the minors (respondents 2 and 3 are represented

by their father / next friend K.Navamani) .. Petitioner

Versus

1.The District Collector,
Collectorate,
Erode 638 011, Erode District.

2.The Revenue Divisional Officer,
Erode 638 011,
Erode District.

3.The District Adi-Dravidar and
Scheduled Tribe Welfare Officer,
Erode 638 011, Erode District. .. Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus Calling for the records relating to the impugned order in Na.Ka.28186/ 2016 /Eka dated 20.10.2020 passed by the 3rd respondent confirming the order in Na.Ka.4245/ 2014/ A4 dated 23.10.2017 passed by the 2nd respondent, quash the same and consequently direct the 2nd respondent to grant Community Certificate to the petitioners 2 and 3 as Hindu Kattu Naickan Community by considering their application dated 22.09.2009.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.R.J.Radhika
Government Advocate for R1 to R3

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The 1st petitioner has filed O.S.No.1046 of 1994, on the file of the Court of Principal District cum Judicial Magistrate, Erode, against the respondents 1, 2 and the Tahsildar, Erode to declare that he belongs to Hindu Kattu Naickan Scheduled Tribe Community and for mandatory injunction to issue permanent Community Certificate and the said Suit came to be decreed on 30.08.1996, with a direction to issue permanent Community Certificate to the 1st petitioner / plaintiff within a period of one month, subject to Rules. The Appeal preferred by the defendants in A.S.No.58 of 1997, also came to be dismissed, vide judgment and decree dated 18.02.1997. The Second Appeal filed by the defendants in S.A.No.1101 of 1998, also came to be dismissed on 12.07.2000, reported in [2000 (3) CTC 273]. The petitioner was issued with a permanent Community Certificate bearing Certificate no.794952 by the Revenue Divisional Officer, Erode dated 07.08.2000 and thereafter, the petitioner approached the office of the Revenue Divisional Officer, Erode, for getting Hindu Scheduled Tribe Kattu Naickan Community Certificate for his sons namely, Mr.N.Sugavanam and Mr.N.Prakash and since the process was delayed, the two minor sons of the 1st petitioner represented by the 1st petitioner filed W.P.No.22528 of 2017 against the 2nd respondent herein, praying for issuance of Writ of Mandamus, directing the said official to issue Hindu Scheduled Tribe Kattu Naickan Community Certificate to them in line with the Community Certificate dated 07.08.2000, issued to the 1st petitioner, by considering their application dated 22.09.2009.

2. The Division Bench of this Court, vide final order dated 23.08.2017 had directed the respondent therein to pass appropriate orders, soon after receipt of the District Vigilance Report and pass appropriate orders within a period of two weeks from the date of receipt of a copy of that order with a further direction. Accordingly, the 2nd respondent, vide impugned proceedings dated 23.10.2017, after taking note of the report of the Circle Inspector as well as statement of the Village Administrative Officer, Villarasampatti, has found that as per the details called, blood relations of the 1st petitioner herein belong to Hindu Kavara Naidu community and rejected the petitions for issuance of Community Certificate sought for by the minor sons of the 1st petitioner.

3. The 1st petitioner, aggrieved by the said order, filed an appeal before the 1st respondent, indicating in detail as to the error crept in or mistakes committed by the 2nd respondent, while rejecting the request for issuance of Community Certificate for his two sons. However to the shock and surprise of the 1st petitioner, the 3rd respondent has issued a Show Cause notice dated 20.10.2020, as to why the Community Certificate issued in favour of the 1st petitioner should not be cancelled and challenging the legality of the same, the petitioners came forward to file the present Writ Petition.

4. The learned counsel appearing for the petitioner would submit that the impugned show cause notice dated 20.10.2020, issued by the 3rd respondent is contrary to the decision rendered by the competent Civil Court as confirmed by this Court, vide judgment dated 12.07.2000 in S.A.No.1101/1998 and that apart, the Showcause notice issued is also on account of predetermination of mind on the part of the 3rd respondent and as such, a reply, if any, to be submitted by the 1st petitioner would be a mere formality for the reason that the 3rd respondent has already took a decision to cancel the Community Certificate, issued in favour of the 1st petitioner in pursuant to the Civil Court decree. It is the further submission of the learned counsel appearing for the petitioners that though the appeal was preferred before the 1st respondent, the 3rd respondent who utterly lacks jurisdiction on account of the reasons stated by the 1st petitioner, has dismissed the appeal itself and prays for interference.

5. Per contra, Ms.R.J.Radhika, learned Government Advocate accepts notice on behalf of the respondents 1 to 3 and would submit that the 2nd respondent on a detailed analysis and consideration of the materials placed, found that the close relatives of the petitioners belong to Hindu Kavara Naidu community and it is not listed as Scheduled Tribe Community and as such, the impugned Showcause notice is preferably justifiable and further points out that it is also open to the petitioners to submit their response to the showcause notice and depending upon the contents of the same, the 3rd respondent would take a decision and hence prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. A perusal of the order dated 23.10.2017 passed by the 2nd respondent would indicate that while rejecting the application submitted on behalf of the minor sons of the 1st petitioner for issuance of Hindu Scheduled Tribe Kattu Naickan Community Certificate, an indication has been given to avail the appeal remedy before the 1st respondent, in the event of concerned persons aggrieved by the said order and accordingly, the

petitioner has filed the appeal dated 18.11.2017, by enclosing very many documents. It appears from the impugned order of the 3rd respondent dated 20.10.2020 that he acted in pursuant to the communication of the Collector of Theni District dated 07.10.2020 and chose to reject the main appeal. In the considered opinion of this Court, the appeal preferred by the two minor sons of the 1st petitioner have to be dealt with and disposed of by the 1st respondent and such function cannot be delegated to the 3rd respondent and hence on the sole ground, the impugned order passed by the 3rd respondent warrants interference.

8. It is also made clear that this Court have not gone into the merits or otherwise of the claim projected by the 1st petitioner on behalf of his two sons, in the appeal preferred before the 1st respondent.

9. In the result, the Writ Petition is partly allowed and the impugned order dated 20.10.2020, passed by the 3rd respondent, is set aside and the appeal dated 18.11.2017 filed by the 1st petitioner on behalf of the two minor sons, namely the petitioners 2 and 3 herein stands restored to the file of the 1st respondent, who shall take into consideration the contents of the said appeal memorandum, after affording an opportunity of personal hearing to the petitioners and give a disposal and pass appropriate orders on merits and in accordance with law, as expeditiously as possible, preferably within a period of ten weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registr

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Collectorate,
Erode 638 011, Erode District.

2.The Revenue Divisional Officer,
Erode 638 011, Erode District.

3.The District Adi-Dravidar and
Scheduled Tribe Welfare Officer,
Erode 638 011, Erode District.

+1cc to M/s N.Manokaran, Advocate SR.NO. 38734

W.P.No.16872 of 2020

AJB (CO)
RVR 19/12/2020