

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.02.2020

Orders Pronounced on : 28.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Contempt Petition No.1987 of 2019

R.Dinesh

.. Petitioner

Vs.

Subramaniam,
The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-600 028.

.. Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act to punish the respondent for wilfully disobeying the order made in W.P.No.28861 of 2015, dated 22.04.2016 on the file of this Court.

For petitioner : Mr.C.Rajan

For respondent : Mr.M.Elumalai, Govt. Advocate

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ORDER

The present Contempt Petition has been filed alleging non-compliance of the order of this Court, dated 22.04.2016 made in W.P.No.28861 of 2015. The said Writ Petition in W.P.No.28861 of 2015 was filed for issuance of a Writ of

Certiorarified Mandamus to call for the records relating to the impugned order therein passed by the respondent in his proceedings O.Mu.No.Aa.5824/15, dated 03.08.2015 and quash the same and to direct the respondent to issue a Legal Heirship Certificate for petitioner's sister Dr.Bina Rabindran, based on application dated 08.06.2015 and records provided to them by this Court. In the said Writ Petition, this Court passed the following order:

"4. Learned counsel for the petitioner has produced the copy of the order of this Court in an identical situation wherein, the learned Single Judge of this Court had elaborately discussed the issue of class II legal heir and held in paragraph 11 as under:

"The petitioners are given liberty to make a fresh application before the Tahsildar along with a sworn affidavit. They should also produce the birth certificate of the deceased and their birth certificate, in case births were duly registered before the Registrar of Birth. It is open to the Tahsildar to conduct an enquiry in the matter and to submit a report to the Revenue Inspector, who in turn, will cross verify the report and thereafter, will forward it to the Tahsildar. It is for the Tahsildar to pass appropriate orders thereafter, on the basis of the affidavits and the result of enquiry conducted by the Village Administrative Officer and Revenue Inspector.

The petitioners are given fifteen days time to make an application before the first respondent. In case any such application is made, the first respondent is directed to conduct an enquiry and decide the matter as expeditiously as possible and in any case, on or before 31st May, 2013"

5. Following the same, this writ petition is also disposed of on the above lines. No costs."

2. It is the submission of the learned counsel for the petitioner that this Court, by the said order dated 22.04.2016, had given 15 days time to the petitioner to make an application before the respondent and in case such an application is made, the respondent was directed to conduct an enquiry and decide the matter as expeditiously as possible. In spite of the same, the respondent has not complied with the said order, but they have issued only Relationship Certificate instead of issuing Legal Heirship Certificate, and thus, according to the learned counsel for the petitioner, the respondent has committed contempt of the Court.

3. The respondent has filed counter affidavit stating that the petitioner-R.Dinesh submitted application for issuance of Legal Heirship Certificate on 02.05.2016 for his deceased sister Dr.Bina Rabindran. As per G.O.(Ms).No.2906, Revenue Department, dated 04.11.1981, the jurisdictional Tahsildar is empowered to issue the said 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 is that the Tahsildar should refrain

from issuing the Legal Heirship Certificate to Class-II legal heirs. Hence, on the representation of the applicant and in obedience of the order of this Court, the Relationship Certificate bearing No.B4/8409/2016, dated 01.07.2016 was issued to the petitioner by the Tahsildar, Mylapore Taluk.

4. The respondent has filed additional counter affidavit stating that as a Tahsildar can issue Legal Heirship Certificate only in favour of Class-I heirs as defined under Section 8 of the Hindu Succession Act, the respondent-Tahsildar is not empowered to issue the Legal Heirship Certificate to Class-II legal heirs. This is evident from the Government Letter in No.1534, dated 28.11.1991 issued by the Special Commissioner and Secretary to Government, Revenue Department. In the annexure to the said Circular, dated 28.11.1991, guidelines were issued for being following while issuing the Legal Heirship Certificate. In Clause-2 of the annexure, it is stated that the Tahsildar should avoid issuing Legal Heirship Certificate to Class-II legal heirs and in respect of those cases, where there is rival claim. Subsequently, another Circular in Circular No.11 of 2017 was issued by the Principal Secretary, Commissioner of Revenue Administration, Disaster Management and Mitigation Department, dated 09.08.2017, in which it is stated that the Legal Heirship Certificate shall be issued by Tahsildar for all direct heirs applying for Death Certificate through online in CSC mode. Thus, from the year 2017, the issuance of Legal Heirship

Certificate had been computerised and as per the systemised format, applications submitted only for issuing Legal Heirship Certificate to Class-I heirs can be incorporated in the computer. Further, in respect of any application submitted for issuing Legal Heirship Certificate to Class-II heirs, there is no provision in the computer to generate such a Certificate. All the required data are incorporated in the computer and a Class-I legal heirs can generate the Certificate and there is no provision for generating such Certificate for Class-II legal heirs.

5. It is further stated in the additional counter affidavit that another Circular in Circular No.9 of 2019, dated 24.09.2019, was issued by the Additional Chief Secretary/Commissioner of Revenue Administration, giving guidelines to be followed in the matter of issuing Legal Heirship Certificate and the same indicates the manner for issuing the Legal Heirship Certificate. There is a specific reference made in the said Circular that the Tahsildar shall not issue the Legal Heirship Certificate in favour of Class-II legal heirs, which runs contrary to Section 8 of the Hindu Succession Act. In paragraph 4 therein, it is also stated that the Tahsildar should issue the Legal Heirship Certificate only to the direct or Class-I heirs as mentioned in paragraph 2(3) therein and as per Section 8 of the Hindu Succession Act, for all direct legal heirs applying for such Certificate through online. Thus, according to the respondent, he is not

empowered to issue the Legal Heirship Certificate to the petitioner for his deceased sister, who falls under Class-II legal heir as per Section 8 of the Hindu Succession Act. The respondent is bound to follow the orders issued by the Government from time to time and to adopt such procedures in that regard.

6. However, the learned Government Advocate appearing for the respondent submitted that the petitioner can very well get a Succession Certificate from the competent Court having jurisdiction over the matter and thus, he prayed for dismissal of the Contempt Petition.

7. In the above context, the learned counsel for the petitioner relied on an order of this Court (Madurai Bench) in W.P.(MD).No.24676 of 2019, dated 21.11.2019 (Naziruddin Vs. The District Collector, Tiruchirappalli District and 2 others), in which the Writ Petition filed for quashing the order of the third respondent-Tahsildar therein and praying to direct the respondents 1 to 3 therein to issue the required Legal Heirship Certificate to the petitioner therein, based on his application dated 25.09.2019, was allowed by this Court, quashing the impugned order therein, based on the order of this Court (Madurai Bench) dated 03.08.2018 in W.P.(MD).No.15901 of 2018 (N.R.Raja and others Vs. The Tahsildar, Madurai South) and also another order of this Court (Madurai Bench) in W.P.(MD).No.4316 of 2019 (Kamatchi Vs. The Tahsildar, Kulathur Post and Taluk), dated 24.04.2019, and this Court in the said

W.P.(MD).No.24676 of 2019, observed that when an application is filed seeking Legal Heirship 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 and after enquiry, if it is found that the applicant is the legal heir, he should be issued with the Legal Heirship Certificate. It was further observed by this Court that if it is found that some other Class-II heirs are available to the deceased therien, there is no impediment to issue the Legal Heirship Certificate including all the legal heirs and the third respondent therein was directed to issue Legal Heirship Certificate after enquiry and time limit was also mentioned by this Court in that order.

8. Be that as it may. In the order under contempt, this Court granted liberty to the petitioner to make a fresh application before the Tahsildar along with a sworn affidavit and he shall also produce the Birth Certificate of the deceased and that the birth was duly registered before the Registrar of Birth. It is open to the Tahsildar to conduct an enquiry in the matter and to submit a report to the Revenue Inspector, who in turn, will cross verify the report and thereafter, will forward it to the Tahsildar. It is for the Tahsildar to pass appropriate orders thereafter, on the basis of the affidavits and the result of enquiry conducted by the Village Administrative Officer and Revenue Inspector.

Further, the petitioner was given fifteen days time to make an application before

the respondent. In case any such application is made, the respondent was directed to conduct an enquiry and decide the matter as expeditiously as possible. These directions were issued by this Court in the order under contempt based on similar order passed by this Court, as mentioned therein.

9. Thus, there is no positive direction issued by this Court in the said order under contempt, which was issued based on the similar case mentioned therein. If the petitioner is still aggrieved by issuance of the Relationship Certificate by the respondent-Tahsildar, it is open to him to work out his remedy in the manner known to law.

10. With the above observation and liberty, the Contempt Petition is dismissed. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cs

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

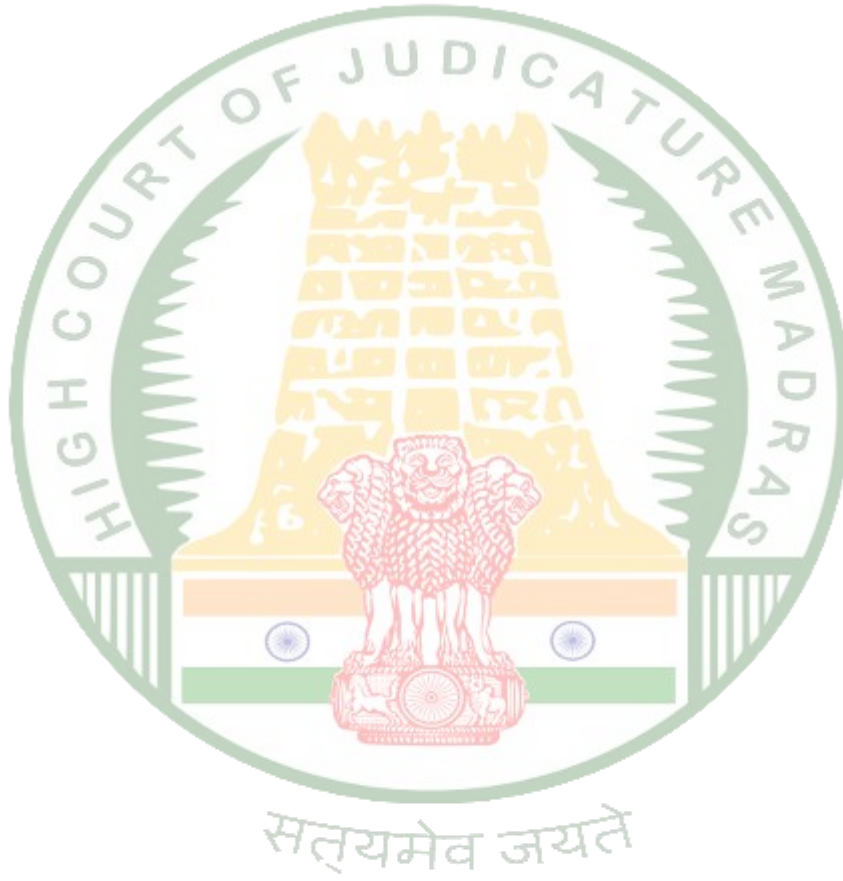
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SMI/18.03.2020

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To

The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-600 028.



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