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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition No. 13227 of 2020
and

Writ Petition No. 15022 of 2021

A.Sureshbabu

... Petitioner in W.P.No.13227 of 2020

1. G.Chandrasekaran
2. G.Vijaya

... Petitioners in W.P.No.15022 of 2021

Versus

The Tahsildar,
Purasawakkam,
Chennai - 3

... Respondent in W.P.No.13227 of 2020

The Tahsildar,
Aynavaram Taluk,
Chennai District,
Chennai 600 102.

... Respondent in W.P.No.15022 of 2021

Prayer in WP.No.13227 of 2020: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the rejection of the petition dated 04.06.2020 and to quash the same. (Prayer in the writ petition is amended as per order dated 10.02.2021 made in WMP No. 21488 of 2020 in WP No. 13227 of 2020)

Prayer in WP.No.15022 of 2021: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for records dated 24.04.2021 order ந.க.எண்.ஆ)3/0308/2021 on the file of the respondent and quash the same and issue consequential direction directing the respondent to furnish Class II Legal Heir certificate to the Petitioners as per the representation dated 15.02.2021.



For Petitioner : Mr. G. Appavoo in WP No. 13227 of 2020
: Mr.B.Sentilkumar in WP.No.15022 of 2021
For Respondent : Mr. Stalin Abhimanyu
in Both WP's : Government Counsel

O R D E R

In both these writ petitions, challenge is to the order of rejection passed by the respective respondent, rejecting the request of the respective petitioners for issuance of legal heir certificates. Both the orders of rejection have been passed on the ground that the petitioners are not Class I legal heirs and they are Class II legal heirs.

2. The petitioner in WP No. 13227 of 2020 claims that he was born to his biological parents Thiru. K. Anthony and Thamaraiselvi on 20.08.1994. However, on 16.10.2008, his paternal Uncle Yesu @ Yobu adopted the petitioner by following all the customs besides executing a registered Deed of Adoption dated 16.10.2008 which was registered as document NO. 3625 of 2008 on the file of District Registrar, South Chennai. It is stated that Yesu @ Yobu was employed as Sanitary worker in the Corporation of Chennai. According to the petitioner, the whereabouts of his adopted father Yesu @ Yobu were not known to him for the past seven years and therefore, he has filed a suit for declaration in O.S. No. 6235 of 2018 and obtained a decree thereof on 02.12.2019. Based on the civil court decree, the petitioner submitted an application on 20.02.2020 followed by a reminder dated 04.06.2020. As the petitioner's representations did not evoke any response, he has originally filed the above Writ Petition for a Mandamus. During the pendency of this writ petition, the respondent passed an order dated 04.06.2020 rejecting the petitioner's claim for issuing legal heir certificate on the ground that the petitioner is not a Class I legal heir but he is a Class II heir.

3. The averments in WP No. 15022 of 2021 are to the effect that the petitioners are the children of born to Govinda Chetty and Late. Sakunthala. Apart from the petitioners, one Latha was also born to their parents. In other words, the said Latha is the sister of the petitioners. The first petitioner purchased a property bearing Flat No.4/116, A Type, 43rd Street, SIDCO Nagar, Villivakkam measuring an extent of 462 square feet by way of a sale deed dated 22.03.2003. Out of natural love and affection the first petitioner had towards his sister Latha, he



settled this property in her favour on 18.02.2010 by means of a registered document No. 827 of 2010. While so, the petitioners sister Latha died on 17.07.2020 as a bachelor. The petitioners therefore claim that they are the surviving legal heirs to succeed to the estate of their sister G. Latha. They have submitted an application on 14.08.2020 along with necessary supporting documents to prove their relationship with the deceased Latha. However, by the impugned order, the respondent rejected the application of the petitioners only on the ground that the petitioners are Class II legal heirs.

4. The learned counsel for the respective petitioners submitted that in similar circumstances in WP (MD) No. 15901 of 2018 [N.R.Raja and others v. the Tahsildar, Madurai South] by order dated 03.08.2018, this Court directed the respondent therein to grant legal heir certificate to class II legal heirs also. The relevant passage of the said order is usefully extracted below:

"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.



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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



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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 can 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



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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 anothers), 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 Clause-I heirs are not live, Clause-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.

6. 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.

5. 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



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order of the descendants, specified under the Succession Act or any other personal law for that matter.

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.

7. In the instant case, the respondents are not justified in denying the legal heirship certificate of late Periyamadasamykonar 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.

8. In the result, the impugned order dated 25.08.2016 is set aside and consequently, the respondents herein are directed to conduct a proper enquiry and issue Legal heirship Certificate of Late Periyamadasamykonar to the petitioner, if he is 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."

3. The above order is self-explanatory. As such, the respondent is not justified in rejecting the



petitioner's application on the sole ground that Late N.R.Santha, does not have any direct legal heir.

4. In the result, the impugned order dated 08.03.2018 passed in O.Mu.No.m2/251/2018, by the respondent, is set aside and consequently, the respondent is directed to conduct a proper enquiry and issue Legal heirship Certificate of Late N.R.Santha to the petitioners, if they are 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."

5. The learned counsel for the petitioners, in unison, placed reliance on the order dated 06.03.2020 passed in WP No. 5883 of 2020 (P. Riza Ahmed vs. The Tahsildar, Walajah Taluk, Walajah, Ranipet District) and contended that in the aforesaid decision, this Court, after analysing the various decisions in the field, has concluded that a Tahsildar is empowered to issue even Class II legal heir certificate provided he is satisfied with the genuineness of the claim made by the applicant after conducting an enquiry. Only in cases where the Tahsildar is not satisfied with the genuineness of the claim, he can direct the applicant to approach the competent Civil Court. The learned counsel for the petitioners therefore prayed for allowing the writ petitions.

6. On the other hand, the learned Government Advocate appearing for the respondents submitted that the orders of rejection were passed on the basis of the Circular dated 24.06.2019 issued by the Government wherein it was specifically ordered that the Tahsildar are only empowered to issue legal heir certificate for all direct legal heirs through online. Therefore, on the basis of the aforesaid Circular No.11/2017 dated 09.08.2017 issued by the Revenue Administration and Disaster Management and Mitigation Department, the orders, which are impugned in these writ petitions, are proper. The learned Government Counsel therefore prayed for dismissal of the writ petitions.

7. Heard the counsel for the respective petitioners and the learned Government Counsel for the respondents. In both these writ petitions, the petitioners have challenged an order of rejection passed by the respective respondent, refusing to issue legal heir certificate to the petitioners on the ground that the petitioners are not Class I legal heir of the respective deceased but are Class II legal heir. Therefore, on the basis of the circular dated 09.08.2017 issued by the Principal Secretary/Commissioner of Revenue Administration, the



orders of rejection were passed.

8. The issue involved in these writ petitions is no longer res integra. The question as to whether a Tahsildar is empowered to issue a legal heir certificate to a Class II legal heir is settled by way of several judicial pronouncements. In WP No. 5883 of 2020 dated 06.03.2020, mentioned supra, this Court has passed the following direction:-

"5. Admittedly, the petitioner is not the Class I legal heir of the deceased Raziya Begum, being the brother, he is only the Class II legal heir. However, as claimed by the petitioner, the deceased is a married person and she has no other legal heirs except her brother. Since in the absence of any other Class I legal heir, there is no impediment for the respondent/Tahsildar to consider the said request as per the guidelines issued by the Government, which reads as follows:

1. As per the present procedure the Tahsildar has to issue the legal heirship certificate to the direct heir.

2. The Tahsildars should avoid issuing legal heirship certificate in respect of the following items mentioned below, apart from the direct heirs and the applicants should be instructed to get the certificate through the Civil Court.

a. If there are more than one wife/husband for the deceased, and even if they have children and if it is evident that there is a partition dispute among them.

b. When there is a condition to issue heir certificate for the person, who has left the family for seven years by deeming that person to be dead.

c. If a person is residing in other District, and does not have the residence within the limits of the Taluk and if he is not in possession of a house or property, and does not attend the enquiry to give his statement to the Tahsildar.

d. If the deceased does not have children and brings up other children.

6. Even as per the above guidelines, the respondent/Tahsildar should avoid issuing legal heir certificate falling under the above four categories only. Since the petitioner does not fall under anyone of the above categories, the impugned order is set aside and the matter is remitted back to the respondent/Tahsildar to reconsider the claim of the petitioner in the light of the observation stated



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supra and pass appropriate orders on merits and in accordance with law, after conducting enquiry and verifying the fact whether any other legal heirs are available for the deceased, within a period of 8 weeks from the date of receipt of a copy of this order.

With the above direction, this writ petition is disposed of. No costs."

9. In another order passed by this Court on 22.12.2020 in WP No. 15403 of 2020 (V. Devan vs. The Tahsildar, Office of the Tahsildar, Chennai) this Court, in para No.7 held that the respondents are not justified in denying the legal heirship certificate of late. Periyamadasamy Konar 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 heir 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.

10. Therefore, it is clear that the Tahsildar of a Taluk is not in any manner restrained from issuing a Class II legal heir certificate in the absence of Class I legal heir. All that is required is that the Tahsildar has to satisfy himself as to the genuineness of the claim of the applicant who seeks for issuing a Class II legal heir. For arriving at such satisfaction, he has to conduct an enquiry and to go through the documentary evidence filed in support thereof. In case, there is any dispute with regard to the status of Class II legal heir, then he can direct the applicant to approach the Civil Court for relief. In the present case, the respective respondent has relied on the Circular No. 11/2017 dated 09.08.2017 to reject the applications of the respective petitioner. In the light of the above judicial pronouncements made by this Court, this Court is of the view that the Circular dated 09.08.2017 has no statutory force. Even otherwise, only in case of dispute as to the status of an applicant as a Class I or Class II legal heir, the Tahsildar can direct the applicant to approach the Civil Court and not in all the cases where there is no dispute with respect to the status as Class I or Class II legal heir.

11. In the light of the above, the orders of rejection dated 04.06.2020 and 24.04.2021, passed by the respective respondent in these writ petitions, are set aside. The matter is remanded back to the respective respondent for fresh consideration of the application submitted by the respective petitioner (s) for issuing a Class II legal heir certificate. The respective respondent is directed to conduct an enquiry, afford an opportunity of hearing to the respective petitioner



(s), consider the documentary evidence that may be submitted by the petitioner (s) and thereafter pass an order on merits and in accordance with law as expeditiously as possible, preferably within a period of six weeks from the date of receipt of a copy of this order.

12. Accordingly, both the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition (s) is/are closed.

Sd/-
Assistant Registrar (CS-II)

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Sub Assistant Registrar

mrr/rsh

To

1. The Tahsildar,
Purasawakkam,
Chennai - 3
2. The Tahsildar,
Aynavaram Taluk,
Chennai District,
Chennai 600 102.

+1cc to M/s.G.Appavu, Advocate, S.R.No.37244

+1cc to the Government Pleader, High Court, Madras, S.R.No.38055

WP Nos.13227 of 2020
and 15022 of 2021

GP (CO)
SU (24/09/2021)