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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.17368 OF 2021

G.Vasudeva

... Petitioner

Versus

The Tahsildar,
Mambalam Taluk,
New No.1, Old No.2,
Bharathidasan Salai,
K.K. Nagar,
Chennai - 600 078.

... Respondent

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to consider the petitioner's representation regarding the issue of Class-II Legal heir certificate in light of the order passed in J. Babu vs. The Tahsildar on 27 July 2020.

For Petitioner : Mr.R.Nirmala Devi

For Respondent : Mr.Stalin Abhimanyu
Government Counsel

O R D E R

The present petition has been filed for a mandamus directing the respondent to consider the petitioner's representation with respect to the issuance of Class-II Legal heir certificate to him.

2. According to the petitioner, his brother G.Mohan Babu died as a bachelor on 21.05.2021. His parents Govindasamy and Muniammal predeceased him on 10.11.1997 and 28.04.2006 respectively. So, the petitioner being an only surviving class II legal heir of his deceased brother, approached the respondent with all the necessary documents and sought issuance of legal



heirship certificate. But, the respondent refused to entertain the same on the ground that the petitioner is not a direct legal heir of the deceased. Therefore, the petitioner made a representation dated 29.07.2021 to the respondent seeking issuance of class II legal heir certificate of his deceased brother, However, till date, no action was taken on the said representation, which compelled him to file this writ petition for the aforesaid relief.

3. The learned counsel for the petitioner 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 submitted that in the said order, 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. For better appreciation, the relevant paragraphs of the said order are reproduced hereunder:

"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.



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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 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."

Hence, the learned counsel prayed for appropriate direction to the respondent in this writ petition.

4. On the other hand, the learned Government counsel taking notice for the respondent fairly submitted that the respondent would consider the representation of the petitioner, on merits and also in the light of the order as referred to on the side of the petitioner, within a time frame to be fixed by this court.

5. Considering the facts and circumstances of the case and having regard the submissions made by the learned counsel on either side and also following the aforesaid order passed by this court, the respondent is directed to conduct an enquiry, afford an opportunity of hearing to the petitioner, consider the documentary evidence that may be submitted by him and thereafter pass an order, on the petitioner's representation dated 29.07.2021, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this



order. Accordingly, the writ petition stands disposed of. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dhk

To

The Tahsildar,
Mambalam Taluk,
New No.1, Old No.2,
Bharathidasan Salai,
K.K.Nagar,
Chennai - 600 078.

+lcc to Mr.R.Nirmala Devi, Advocate, S.R.No.53261
+lcc to the Government Pleader, S.R.No.53226

W.P.No.17368 of 2021

KSM(CO)
PBS/01/11/2021