IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. No. 20094 of 2021

P. Kanagaraj ...Petitioner

Versus

1.The Tahsildar
Taluk Office
Annur
Coimbatore – 641 653

2.The Revenue Inspector
Sarkar Samulam
Kovilpalayam
Coimbatore – 641 107

3.The Village Administrative Officer
Vellaimedai
Coimbatore – 641 110 ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent with respect to application No. TN-7202006221031 dated 22.06.2020 and quash the same and consequently direct the respondents to issue the legal heir ship certificate for the deceased Ponnian Gounder @ Ponniya Gounder as prayed by this petitioner in his representation dated 24.03.2021

For Petitioner : Mr.S.Vediappan

For Respondent : Mr.Stalin Abhimanyu
Government Counsel for R1-R3

O R D E R

The relief sought in this writ petition is to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent with respect to application No. TN-7202006221031 dated 22.06.2020, quash the same and consequently direct the respondents to issue legal heir ship certificate for the deceased Ponnian Gounder @ Ponniya Gounder as prayed by the petitioner in his representation dated 24.03.2021.

2. According to the petitioner, his father Ponnian Gounder @ Ponniya Gounder originally married one Thulasiammal and out of the said wedlock, two sons were born namely Rajamani and Shanmugasundaram. After the death of the said Thulasiammal, he again married one Thulasiammal, (both wives' names are one and the same) and through his second marriage, he has three children viz., Shanthamani, Marappan and Kanagaraj (petitioner herein). While so, the petitioner's father died on 08.04.1987, which was duly registered with the Corporation, leaving behind him, the second wife and five children (two from the first wife and three from the second wife). Thereafter, the petitioner applied for legal heirship certificate for his deceased father through online on 22.06.2020, which was stated to be rejected by the first respondent, on the ground that the deceased had two wives. However, no order was served on him, in this regard. Therefore, he made a representation dated 24.03.2021 narrating all the factual circumstances to the respondents enclosing necessary documents. Since no action was taken on the same, the petitioner has come up with this writ petition for the aforesaid relief.

3. The learned counsel for the petitioner submitted that the petitioner, who was born through the second marriage of the deceased Ponnian Gounder @ Ponniya Gounder, after the demise of his first wife, applied for legal heirship certificate, along with other legal heirs of the deceased and there is no rival claims with respect to the claiming succession to the deceased. In such circumstances, the rejection of the application of the petitioner seeking legal heirship certificate, merely stating that the deceased had two wives, cannot be sustainable in law as well as on facts. The learned counsel further pointed out that clause 7 of the circular dated 09.08.2017 issued by the Commissioner of Revenue Administration, only states that the Tahsildar shall not issue legal heir certificate in respect of the claims when more than one wife exists for the deceased, whereas in this case, there is only one wife and the petitioner is claiming legal heir certificate along with other legal heirs and therefore, the said circular cannot be applicable to the facts of the present case. It is also submitted that in similar circumstances in WP.No.14998 of 2020, this court, by order dated 18.11.2020, allowed the said writ petition by directing the Tahsildar concerned to issue legal heirship certificate to the petitioner therein. Thus, the learned counsel prayed for allowing this writ petition.

4. Heard the learned Government counsel taking notice for the respondents and also perused the documents enclosed in the typed set of papers.

5. There is no dispute with regard to the relationship among the legal heirs of the deceased Ponnian Gounder @ Ponniya

Gounder. Admittedly, the petitioner made application for legal heirship certificate along with other legal heirs of the deceased and hence, there is no rival claim in this regard. Further, as per clause 7 of the circular dated 09.08.2017 issued by the Commissioner of Revenue Administration, relating to the procedures and guidelines to be followed by the Tahsildars, while considering the claim of legal heirship certificate, there is a prohibition, only if more than one wife exists for the deceased, whereas in this case, the mother of the petitioner is the only wife of the deceased. Therefore, the first respondent ought to have considered the petitioner's application, after conducting due enquiry, as regards the factual matrix and thereafter, pass an order. On the other hand, the web copy relating to the status of the petitioner's application enclosed at page 3 of the typed set of papers, would disclose that 'application rejected' and 'deceased person had two wife, hence, application is recommended for rejection', which, in the opinion of this court, cannot be countenanced.

6. It is also to be noted that in the order dated 06.03.2020 passed in WP No. 5883 of 2020 (P. Riza Ahmed vs. The Tahsildar, Walajah Taluk, Walajah, Ranipet District), 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.

7. That apart, in similar circumstances, in the order dated 18.11.2020 passed in WP No. 14998 of 2020 (Lakshmi Jagannathan vs. The Tahsildar, Tambaram Taluk, Tambaram, Chennai), cited on the side of the petitioner, this court reiterated that 'the commissioner of Revenue Administration shall sensitize the officials in the order of hierarchy in the revenue Department about the applicability of personal law and shall ensure that merely because there were two wives, the claim of the applicants cannot be rejected, without ascertaining the factual position.' For better appreciation, the relevant paragraphs of the said order are extracted below:

> "6. It is to be stated that there is no dispute qua the relationship between the parties. When there is no dispute among them, the authorities cannot dispute the fact and give any other interpretation to the relationship. The petitioner herself stated that she is the second wife of the deceased, after the dissolution of the first marriage. She did not include the names of her children born through her first husband in the application. On the other hand, she sought for the

legal heirship certificate only for herself, the mother~in~law and sons of the deceased, who were born through his first wife. The first wife of the deceased, whose marriage with the deceased was dissolved in the manner known to law, also appeared before the respondent and deposed in writing. Had there been any dispute between the two wives of the deceased, then the respondent is justified in passing the impugned order directing the petitioner to approach the civil court for appropriate remedies. Admittedly, the persons named in the application are all Class~I legal heirs. But the respondent without weighing all these materials mechanically passed a cryptic and stereo~typical order without application of mind, thereby failed to follow the guidelines issued by the Government in various circulars and orders. When the petitioner herself sought for the legal heirship certificate including the sons of the first wife of the deceased, excluding her sons born through her first husband, there is no necessity for the respondent to venture into the natural guardian question of her sons.

7. At this juncture, it is apt to quote Section 8 of the Hindu Succession Act, 1956, which reads as follows :

"8. General rules of succession in the case of males.?

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter?

(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;

(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and

(d) lastly, if there is no agnate, then upon the cognates of the deceased."

Though the respondent and other revenue officials cannot give interpretation of the law of Succession, which is the normally the business of the Courts, they should advert to the Class I, Class II and other heirs enlisted in the said Act and basics of personal laws to apply their mind, while dealing with the applications for issuance of Legal Heirship Certificate, which was expected of them, while conferring on them the power to issue the legal heirship certificates.

8. Discerning the difficulties of the public in obtaining the Legal Heirship Certificate from the revenue authorities citing one or the other reason and other lacunae in the circulars issued by the Commissioner of Revenue Administration, which are the guidelines for the revenue officials at field level, this Court in the order dated 27.07.2020 in W.P.No.5490 of 2017 (J.Babu Vs. The Tahsildar, Tharangampadi Taluk, Nagapattinam District), directed the Commissioner of Revenue Administration to consider various orders passed by this Court and after touching upon the provisions of the Hindu Succession Act, in particular Section 15 of the said Act and other personal laws and to reissue revised guidelines and instructions in the light of those orders and provisions to the revenue officers to issue legal heir certificate strictly in accordance with the circulars in its letter and spirit. In the said order, it was further observed that this Court repeatedly held that even there were class II heirs, the difficulty to identify the members of the class II heirs by the revenue authorities cannot be the reason to reject the request for issuance of legal heir certificates and if the guidelines of field verification, etc., are devotedly followed by the field level officers, i.e., VAO, RI and Tahsildars, in their letter and spirit, the so-called lis and other issues surrounding Class II legal heirs could well be avoided. It is to be reiterated that the Commissioner of Revenue Administration shall sensitize the officials in the order of hierarchy in the revenue Department about the applicability of personal law and shall ensure that merely because there were two wives, the claim of the applicants cannot be rejected, without ascertaining the factual position.

9. In view of the aforesaid discussion, it is clear that the impugned order is liable to be set aside. Though an appeal remedy is provided against the order of the Tahsildar with the Revenue Divisional Officer, having regard to the facts and circumstances of the case and failure of the respondent to exercise the power conferred on him, the petitioner cannot be compelled to exhaust the appellate remedy and thus, she is entitled for the issuance of the Legal Heirship Certificate without exercising such an appellate remedy.

10. In the result, this writ petition is allowed and the respondent is directed to issue legal heirship certificate to the petitioner, as has been requested in her application dated 12.11.2019 and the representation dated 05.02.2020. The said exercise shall be complete within a period of four weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.”

8. In the light of the aforesaid order, which is squarely applicable to the facts of the present case, the so-called rejection of the petitioner's application cannot be allowed to sustain and the same is hereby set aside. Consequently, the first respondent is directed to consider the representation of the petitioner dated 24.03.2021, conduct an enquiry and pass an order, on merits and in accordance with law, after affording an opportunity of hearing to the petitioner as well as any other interested parties, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above said directions, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar (CS-IX)

// True Copy //

Sub Assistant Registrar

dhk

To

1.The Tahsildar
Taluk Office
Annur
Coimbatore – 641 653

2.The Revenue Inspector
Sarkar Samulam
Kovilpalayam
Coimbatore – 641 107

3.The Village Administrative Officer
Vellaimedu
Coimbatore – 641 110

WP No. 20094 of 2021

KSM(CO)
RVM(02/11/2021)