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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.NO.19775 OF 2021

T.D.Manivannan

.. Petitioner

Versus

The Tahsildar
Mambalam Guindy Taluk
Chennai - 600 083

.. Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to issue legal heir certificate of the petitioner's younger brother T.D. Sekar mentioning the petitioner herein as the Class-II legal heir on the basis of the petitioner's application dated 24.08.2021

For Petitioners : Mr.P.Gunaraj

For Respondent : Mr.Stalin Abhimanyu
Government Counsel

ORDER

Mr.Stalin Abhimanyu, learned Government Counsel takes notice for the respondent. By consent of both the parties, the writ petition is taken up for final disposal at the time of admission itself.

2. According to the petitioner, he and his brother T.D. Sekar are the children born to his parents T.A. Duraikannan and T.D. Kamalammal. It is stated that on 30.05.2000 his father died and on 13.05.2005, his mother died. His younger brother T.D.Sekar was a bachelor and he died on 11.07.2021. Since the petitioner is the class II surviving legal heir of the deceased to inherit his movable and immovable properties, he submitted an application dated 24.08.2021 to the respondent requesting to grant legal heir certificate. It is also stated that on receipt of the application dated 24.08.2021, the respondent has orally informed to the petitioner that since the petitioner is class II



legal heir of the deceased, the respondent is not authorised to issue a legal heir certificate in favour of Class II legal heir as per the Circular No.11 dated 09.08.2017 issued by the Revenue Administration, Disaster Management and Mitigation Department. Feeling aggrieved, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner placed reliance on various orders of this Hon'ble Court, one such order is 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 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. 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.

b. When there is a condition to issue heir certificate for the person, who has left



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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."

4. By placing reliance on the above said order, the learned counsel prayed for appropriate direction to the respondent in this writ petition.

5. 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.

6. Considering the facts and circumstances of the case and having regard to the submissions made by the learned counsel on either side, the respondent is directed to consider the representation of the petitioner dated 24.08.2021 along with the documentary evidence that may be submitted by him, conduct an enquiry, afford an opportunity of hearing to him and thereafter pass an order, on merits and in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.



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

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

The Tahsildar
Mambalam Guindy Taluk
Chennai - 600 083.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.47394
+1cc to the Government Pleader, S.R.No.47855

WP.No.19775 of 2021

PCH(CO)
CS/12/10/2021