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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2021

Coram

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 20885 of 2021

Mr. A. Kumar

.. Petitioner

Versus

The Tahsildar  
Aminjikarai Taluk  
Chennai - 600 030

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the respondent in Na.Ka.E1/1119/2021, dated 03.09.2021 and quash the same as illegal, incompetent and ultravires and consequently, direct the respondent to issue Class II legal heirship certificate for the petitioner's deceased brother namely Mr.A.Subramani died on 16.06.2021.

For Petitioner : Mr. M.P.Saravanan

For Respondent : Mr. Stalin Abhimanyu,  
Government Counsel

O R D E R

The petitioner calls in question the proceedings issued by the respondent in Na.Ka.E1/1119/2021, dated 03.09.2021 and after quashing the same, seeks for a consequential direction to direct the respondent to issue Class II legal heirship certificate to him. The respondent, by the aforesaid proceedings dated 03.09.2021, refused to issue legal heir certificate to the petitioner only on the ground that he is not a Class I legal heir of his deceased brother Subramani, by relying on the Circular dated 24.09.2019 issued by the Additional Chief Secretary/Commissioner of Revenue Administration, Chepauk, Chennai.

2. The petitioner's parents M. Arjunan and Mrs. Rajammal were blessed with three children and they are (i) A. Subramani (ii) Mrs. Jayalakshmi and (iii) A. Kumar (Petitioner herein).



It is stated that the petitioner's parents died on 30.07.2003 and 11.01.2004 respectively. Subsequently, on 25.11.2009, the petitioner's sister also expired. According to the petitioner, his brother Subramani married one Sundari. His brother Subramani died on 16.06.2021 and on 18.07.2021, his brother's wife Sundari also died. It is stated that the petitioner's brother A. Subramani, during his life time, has purchased a property bearing Plot No.186, P-Block, A-Type, Agathiyar Nagar 29th Street, M.M.D.A. Phase II, Villivakkam, Chennai through a registered sale deed dated 20.04.2015, registered as document No. 1925 of 2015. As the deceased Subramani and his wife Sundari died issueless, the petitioner is the only legal heir to succeed to the estate of his brother Subramani. Therefore, after the death of his brother Subramani, the petitioner has approached the Revenue Officials and requested them to transfer the revenue records of the aforesaid property in his name, however, they refused to do so and directed the petitioner to furnish the legal heirship certificate indicating that he is the only legal heir of his deceased brother Subramani. Therefore, he made an application dated 19.08.2021 to the respondent requesting to issue the legal-heirship certificate indicating that he is the legal heir of his deceased brother Subramani, however, the respondent vide impugned proceedings dated 03.09.2021, rejected his request on the ground that the petitioner is not a direct Class I legal heir of his deceased brother Subramani and as per the Circular No.9/2019, R.C.No.RA5 (3)/180/2017, dated 24.09.2019, issued by the Additional Chief Secretary/Commissioner of Revenue Administration, the respondent cannot issue the legal-heirship certificate to the Class II legal heirs of the deceased. Aggrieved over the aforesaid order of rejection dated 03.09.2021, the petitioner has come before this Court with the present writ petition.

3. The learned counsel for the petitioner submitted that in similar circumstances, this Court had passed an order in WP (MD) No. 15901 of 2018 [N.R.Raja and Ors. Vs. the Tahsildar, Madurai South] dated 03.08.2018, wherein, it directed the respondent therein to issue legal heir certificate to the Class II legal heirs also. The relevant portion of the said order is usefully extracted below:

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 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 cancel 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



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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 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 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



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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."

4. Further, in support of his contention, the learned counsel for the petitioner also placed reliance on the order passed by this Court in W.P.No.5883 of 2020 (P.Riza Ahmed Vs. The Tahsildar, Walajah Taluk, Walajah, Ranipet District) dated 06.03.2020 and contended that in the aforesaid order, this Court, after analyzing 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. He therefore prayed for allowing this writ petition.

5. On the other hand, the learned Government Counsel appearing for the respondent submitted that the respondent has issued the impugned proceedings, only, on the basis of the Circular dated 24.09.2019 issued by the Additional Chief Secretary/Commissioner of Revenue Administration, in which, it was specifically ordered that the Tahsildar are only empowered to issue legal heir certificate for all direct legal heirs through online. He further submitted that on the basis of the aforesaid Circular, the proceedings issued by the respondent, which is impugned herein, is proper and therefore, he prayed for dismissal of the writ petition.

6. Heard the learned counsel on both sides and perused the materials placed before this Court. In this writ petition, the petitioner has challenged the proceedings issued by the respondent in letter dated Na.Ka.E1/1119/2021, dated 03.09.2021, in and by which, the respondent refused to issue the legal heir certificate to the petitioner on the ground that he is not a Class I legal heir of his deceased brother but Class II legal heir. The aforesaid impugned proceedings was issued only on the basis of the Circular No.9/2019, R.C.No.RA5(3)/180/2017, dated 24.09.2019, issued by the Additional Chief Secretary/Commissioner of Revenue Administration.

7. The issue involved in this writ petition 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



W.P. 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 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."



8. In yet another case of similar nature, this Court passed an order in W.P.No.15403 of 2020 (V.Devan Vs. The Tahsildar, Office of the Tahsildar, Chennai) dated 22.12.2020, wherein, particularly, in paragraph No.7, it 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 legal heirs also, the respondent has chosen to rely upon an outdated letter of the year 1991 and has rejected the request made by the petitioner herein, for issuance of Class II legal heirs.

9. 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 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 certificate. 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 competent Civil Court for relief. In the present case, relying on the Circular No.9/2019, R.C.No.RA5(3)/180/2017, dated 24.09.2019, issued by the Additional Chief Secretary/Commissioner of Revenue Administration, the respondent has rejected the petitioner's application. In the light of the above orders passed by this Court, this Court is of the opinion that the Circular dated 24.09.2019 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.

10. In the light of the above, the impugned proceedings dated 03.09.2021, issued by the respondent in this writ petition, is set aside. The matter is remanded back to the respondent Tahsildar for fresh consideration of the application submitted by the petitioner for issuing a Class II legal heir certificate. The respondent Tahsildar is directed to conduct an enquiry, afford an opportunity of hearing to the petitioner, consider the documentary evidence that may be submitted by the petitioner 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.



11. This Writ Petition shall stand disposed of with the above directions. No costs.

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Sd/-  
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mrr/rsh

To

The Tahsildar,  
Aminjikarai Taluk,  
Chennai - 600 030.

+1cc to Mr.M.P.Saravanan, Advocate, S.R.No.50343

+1cc to the Government Pleader, S.R.No.50904

WP No. 20885 of 2021

AD(CO)  
SU(18/10/2021)