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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. NO. 23835 OF 2021

Rajeswari

.. Petitioner

Versus

1. The District Collector
District Collector Office
No.62, Rajaji Salai, 4th Floor
Chennai - 600 001

2. The Tahsildar
Egmore Taluk
Chennai - 600 031

2. The Tahsildar
Tondiarpet Taluk
Chennai - 600 081

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to issuance of impugned order dated 25.10.2021 A2/761/2021 issued by the 3rd respondent and quash the same and consequently direct the respondent to issue a class-II legal heir certificate in the petitioner name based on the petitioner's representation dated 05.10.2020 to issue Class II Legal heir certificate for the deceased sister Mrs. Anandanayagi @ Neelavathi in favour of the petitioner and her sisters.

For Petitioner	:	Mr.K.R.Gunashekar
For Respondents	:	Mr.Stalin Abhimanyu Government Counsel

O R D E R

Mr. Stalin Abhimanyu takes notice for the respondents. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.



2. It is stated by the petitioner that his parents namely Mr. Elumalai and Ethirajammal were blessed with six children and they are (i) Rajeswari (petitioner) (ii) Krishnaveni (iii) Thirupurasundari (iv) Lakshmi (v) Savithri (vi) T. Anandanayagi @ Neelavathi. It is further stated that the petitioner's father Elumalai died and his mother also died on 21.10.2013. One of the sisters of the petitioner by name Anandanayagi @ Neelavathi was given in marriage to Thulasingham. After marriage, the petitioner's sister Anandanayagi @ Neelavathi died on 09.12.2014 and her husband Thulasingham also died on 26.05.2018 without any children. On the death of her sister Anandanayagi @ Neelavathi, the petitioner and her other sisters have become Class II legal heirs to succeed her estate. Stating that the petitioner and her 4 sisters namely Krishnaveni, Thirupurasundari, Lakshmi, Savitri are the only surviving class II legal heir of the deceased sister Mrs. Anandanayagi @ Neelavathi, an application dated 05.10.2020 seeking legal heirship certificate, was made to the second respondent. However, without considering the provisions of law, the respondent by endorsement dated 25.10.2021, rejected the said application, based on the circular issued by the Commissioner of Revenue Administration, dated 24.09.2018. Challenging the order of rejection dated 25.10.2021, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner 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:

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



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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 surviving legal heir. Therefore, as



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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



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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.

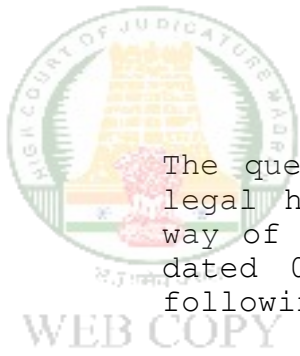
4. Adding further, the learned counsel placed reliance on the order dated 06.03.2020 passed in WP No. 5883 of 2020 (P. Riza Ahmed vs. The Tahsildar, Walajah Taluk, Walajah, Ranipet District) and contended that in the said order, this Court, after analysing the various decisions in the field, has concluded 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. Thus, the learned counsel for the petitioner prayed this Court to set aside the communication impugned herein by allowing this writ petition.

5. On the other hand, the learned Government Counsel appearing for the respondents submitted that the order of rejection was passed on the basis of the Circular No.11/2017 in Rc.No.RA.5(3)/180/2017 dated 09.08.2017 issued by the Principal Secretary / Commissioner of Revenue Administration, Disaster Management and Mitigation Department, Chepauk, Chennai as well as another Circular dated 24.09.2018 wherein it was specifically ordered that the Tahsildars are empowered to issue legal heir certificate only in respect of class I or direct legal heir. Therefore, based on the aforesaid Circulars, the communication, which is impugned herein, is proper and it does not call for any interference by this court.

6. Heard the counsel for both sides and perused the materials placed before this court.

7. In this writ petition, the petitioner has challenged the endorsement made by the third respondent through the communication dated 25.10.2021 on the ground that there is no provision for the Tahsildar to issue legal heirship certificate to the second class legal heir. For this purpose, the third respondent placed reliance on the circular dated 24.09.2018 issued by the Commissioner of Revenue Administration.

8. The issue involved herein 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 issued 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



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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."

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 have 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 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 third respondent has simply rejected the petitioner's application seeking issuance of class II legal heirship certificate of her deceased sister, placing reliance on the circular dated 24.09.2018 issued by the Commissioner of Revenue Administration. Therefore, in the light of the above judicial pronouncements, this Court is of the view that 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 such view of the matter, the impugned communication dated 25.10.2021 of the third respondent is set aside. The matter is remanded back to the third respondent for fresh



consideration. The third respondent is directed to conduct an enquiry, afford an opportunity of hearing to the petitioner as well as any other interested parties, consider the documentary evidence that may be submitted by her and thereafter pass an order, on merits and in accordance with law, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order.

12. With the aforesaid direction, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dhk/rsh

To

1. The District Collector,
District Collector Office,
No.62, Rajaji Salai, 4th Floor,
Chennai - 600 001.
2. The Tahsildar,
Egmore Taluk,
Chennai - 600 031.
2. The Tahsildar,
Tondiarpet Taluk,
Chennai - 600 081.

+1cc to Mr.K.R.Gunashekar, Advocate, S.R.No.57208
+1cc to the Government Pleader, S.R.No.57604

WP No. 23835 of 2021

NRL(CO)
PM/29/11/2021