

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.27022 of 2019

1.Suraj Nirmal Kumar
2.Shairam Nirmal Kumar

..Petitioners

Vs

1. The Tahsildar,
Mylapore,
No.28, Greenways Road,
Raja Annamalai Puram, Chennai - 600 028.

2. The Revenue Divisional Officer,
Chennai (South)
Next to Dr.MGR University,
Guindy, Chennai.

3. Maya Devi Gupta
4. Manju N.Gupta
5. Vandana N. Gupta
6. Amrita N.Gupta
7. Bansidhar N.Gupta

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus to call for records of the legal heirship certificate dated 19.02.2019 in TN 7201902051870 issued by the 1st respondent, quash and revoke the same and further direct the 1st respondent to issue a fresh legal heirship certificate including the names of the Petitioners as legal heirs of the deceased G.Nirmal Kumar

For petitioner

For respondents

... Ms.Sudha Ramalingam

... Mr.K.Parameshwaran,

Government Advocate for R1 & R2

Mr.G.Ilamurugu for R4

R3, R5 to R7 - Retd. tapal

ORDER

This writ petition has been filed challenging the impugned order dated 19.02.2019 passed by the first respondent rejecting the petitioners request for inclusion of their names as Legal Heirs for the deceased G.Nirmal Kumar, who died on 19.01.2019.

2. The case of the petitioner is that they are the children of the second wife of the deceased G.Nirmal Kumar, who died on

19.01.2019. However, under the impugned order, dated 19.02.2019, the first respondent has not included their names as Legal Heirs of the deceased Nirmal Kumar, but has only disclosed the names of the third respondent, who is the mother of the deceased, fourth respondent, who is the first wife of the deceased and respondents 5 to 7, who are the children of the first wife as Legal Heirs. In such circumstances, the petitioner has filed this writ petition challenging the impugned order.

3. Heard Ms.Sudha Ramalingam, learned counsel for the petitioner, Mr.K.Parmeshwaran, learned Government Advocate appearing for the respondents 1 and 2 and Mr.G.Ilamurugu, learned counsel for the fourth respondent. Despite service of notice on the remaining respondents, they have not entered appearance in this matter before this Court.

4. In the Typed set of papers filed by the petitioners along with this writ petition, they have filed the following documents to show that they are the children of the deceased G.Nirmal Kumar :

- a) Birth Certificate of the petitioners ,
- b) Aadhar card of the petitioners
- c) Aadhar card of N.Saraswathi, who is the petitioners mother.
- d) Family Ration card
- e) Voter ID card of the deceased G. Nirmal Kumar, voter ID card of N.Saraswathi, petitioners mother and a copy of the passport of the petitioners.

5. Under the impugned order, the first respondent has not considered the aforementioned documents. In the counter affidavit filed by the respondents 1 and 2, the first respondent has admitted in paragraph 9 that the petitioners are the children of Saraswathi, viz., the second wife of the deceased G.Nirmal Kumar.

6. Paragraph 9 of the counter affidavit reads as follows :

9. As regards the averments of the petitioners set out in paras 4 to 8 of the affidavit, it is respectfully submitted that perusal of the records pertaining to this case showed that the legal heirship certificate was issued erroneously excluding the names of the petitioners born through the 2nd wife Tmt. N.Saraswathi. Hence, necessary proposals submitted to the Revenue Divisional Officer with a request to cancel the erroneous legal heirship certificate issued in TN-7201902051870 consequent on the death of the said G.Nirmal Kumar. The proposals for cancellation of the erroneous legal heir certificate was submitted to the Revenue Divisional Officer, South Chennai Division in

A2/4323/2019, dated 01.10.2019 (Copy enclosed). The second respondent herein has to pursue further and pass orders on the request of the petitioners after conducting necessary enquiry in this regard.

7. Admittedly all the aforementioned factors were not considered by the first respondent in the impugned order. Hence, this Court is of the considered view that arbitrarily, by total non application of mind, the impugned order has been passed. Hence, the matter will have to be remanded back to the first respondent for fresh consideration on merits and in accordance with law.

8. For the foregoing reasons, the impugned order, dated 19.02.2019 passed by the first respondent is hereby quashed and the matter remanded back to the first respondent for fresh consideration. The first respondent shall pass final orders on the petitioner's representation seeking for inclusion of their names as Legal Heirs of the deceased G.Nirmal Kumar, who died on 19.01.2019 on merits and in accordance with law, after hearing all necessary parties, including the petitioners as well as the respondents 3 to 7, within a period of twelve weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Tahsildar, Mylapore,
No.28, Greenways Road,
Raja Annamalai Puram, Chennai - 600 028.

2. The Revenue Divisional Officer,
Chennai (South) Next to Dr.MGR University,
Guindy, Chennai.

+3cc to M/s.Sudha Ramalingam, Advocate Sr.No.3098

+1cc to Mr.G.Ilamurugu, Advocate Sr.No.3148

AKM/11.02.21 /3P-7C/

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