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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P. No. 34181 of 2019

and

WMP.No.34811 of 2019

P.S.M. Buhari

.. Petitioner

Versus

The Thasildar
Purasawakkam Taluk
Chennai - 600 003

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings of the respondent in Procs.A6/3748/2017 dated 15.11.2019 and quash the same as illegal and consequently direct the respondent to issue legal heir certificate for the petitioner's deceased brother, namely P. Abdul Haleem.

For Petitioner : Mr.R.Jayaprakash

For Respondent : Mr.Stalin Abhimanyu
Government Counsel

O R D E R

The prayer made in this writ petition is to issue a writ of certiorarified mandamus, calling for the records pertaining to the proceedings of the respondent in Procs.No.A6/3748/2017 dated 15.11.2019, quash the same and consequently direct the respondent to issue legal heir certificate for the petitioner's deceased brother, namely P. Abdul Haleem.



2. According to the petitioner, his parents viz., Peer Mohammed and S.M.Fathima, had eleven children and they died on 02.12.1994 and 01.08.2003 respectively. While so, one of the petitioner's brothers by name P.Abdul Haleem died on 27.07.2017 as a bachelor. Hence, the petitioner made an application on 06.10.2017 to the respondent requesting to issue a certificate to the effect that he and his siblings are the class II legal heirs of the deceased brother. Instead of issuing such a certificate, the respondent by proceedings dated 17.05.2018, rejected the petitioner's application stating that they are not the direct legal heirs of the deceased brother. Challenging the said proceedings, the petitioner filed WP.No.3642 of 2019, which by order dated 14.02.2019, was disposed of, directing the respondent to reconsider the claim of the petitioner and pass appropriate orders, on merits and in accordance with law, after conducting enquiry, within a period of eight weeks. Even thereafter, the respondent did not consider the claim of the petitioner and by proceedings dated 15.11.2019, they once again rejected the claim of the petitioner seeking legal heir certificate of his deceased brother, placing reliance on the circular dated 09.08.2017, issued by the Commissioner of Revenue Administration, Chennai. Aggrieved over the same, the petitioner is before this court with the present writ petition for the aforesaid relief.

3. Upon notice, the respondent filed a detailed counter affidavit, wherein it is categorically stated that the death certificate issued at the burial ground would show that the deceased P.Abdul Haleem was not a bachelor and he was married; and suppressing the said material fact, the petitioner has filed this writ petition. It is also stated therein that in the order dated 20.11.2019 passed in Contempt Petition No.1549 of 2019 in WP.No.3642 of 2019, this court directed the petitioner to challenge the proceedings dated 15.11.2019 rejecting the claim of the petitioner seeking legal heir certificate of his deceased brother, in an appropriate forum. Instead of approaching the competent civil court, the petitioner has again approached this court with the present writ petition. Thus, according to the respondent, the proceedings impugned herein is perfectly in order and the writ petition is liable to be dismissed.

4. Heard both sides and perused the materials placed



before this court.

5. It is seen that originally, the petitioner's application seeking legal heir certificate of his deceased brother P. Abdul Haleem was rejected by the respondent, stating that the petitioner and his siblings are not the direct legal heirs of the deceased and hence, they were directed to approach the competent civil court for appropriate relief, vide proceedings dated 17.05.2018, which was challenged by the petitioner in WP.No.3642 of 2019. This court, by order dated 14.02.2019, disposed of the said writ petition, the relevant passage of which, is usefully extracted below:

"4. The petitioner claims that the deceased is a bachelor and he has no legal heirs except his brothers and sisters. Hence, it is 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."

3. Even as per the above guidelines, the respondent/Tahsildar could instruct to 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. The connected miscellaneous petition is closed."

6. It is further revealed from the counter affidavit that since the aforesaid order was not complied with by the respondent within the time frame stipulated by this court, the petitioner filed Contempt Petition No.1549 of 2019 in WP.No.3642 of 2019. During the pendency of the same, the respondent vide proceedings dated 15.11.2019, rejected the claim of the petitioner, placing reliance on the circulars dated 09.08.2017 and 24.09.2019 issued by the Commissioner of Revenue Administration. In view of the same, this court closed the contempt petition, granting liberty to the petitioner to challenge the said proceedings in a manner known to law in an appropriate forum. Pursuant to the said observation, the petitioner instead of approaching the civil court concerned, has come up with this writ petition to challenge the said proceedings dated 15.11.2019 issued by the respondent, rejecting the claim of the petitioner seeking legal heirship certificate. Also, in the counter affidavit, it was specifically pointed out that the death certificate issued at the burial ground shows that the deceased was not a bachelor and he was married. In view of the same, this court is of the opinion that there is rival claim with respect to the succession to the deceased and hence, it is appropriate to direct the petitioner to approach the civil court concerned in the manner known to law.



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7. With the above observation, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

dhk

To

The Thasildar
Purasawakkam Taluk
Chennai - 600 003

+1cc to Mr. R. Jayaprakash, Advocate, S.R.No.53460
+1cc to the Government Pleader, S.R.No.53142

WP No. 34181 of 2019

PA(CO)
SB(27/10/2021)