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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.14921 OF 2022

S.K.Vani

.. Petitioner

-Vs-

The Tahsildar,
Aminjikarai Taluk,
Chennai - 600 030

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the order dated 24.12.2020, Ref. No.NA.KA. No.E2/1239/2020 of the respondent and quash the same and consequently direct the respondent to issue a legal heir certificate for my brother E.Dayalan.

For Petitioner : Mr.K.V.Sundararajan

For Respondents : Mr.B.Vijay,
Addl.Govt.Pleader

O R D E R

This Writ Petition has been filed challenging the order dated 24.12.2020 passed by the respondent rejecting the petitioner's application seeking for issuance of legal heir certificate for her deceased brother Dayalan on the ground that the petitioner is not the direct legal heir.

2. The petitioner has challenged the impugned order on the ground that the circular issued by the Additional Chief Secretary/ Commissioner of Revenue Administration which is reflected in the impugned order does not apply to her. The circular has been referred to in another order dated 06.05.2022 passed by this Court in W.P.No.12220/2022. The Circular relied upon by the respondent reads as follows:



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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. Admittedly, the petitioner is the sister of the deceased who died as a bachelor. The petitioner has also produced the legal heirship certificate of her father disclosing that her brother Dayalan was unmarried. According to the petitioner, the aforementioned legal heirship certificate of her deceased father was also produced to the respondent, but despite production of the same, by total non-application of mind, the impugned order has been passed, rejecting the petitioner's application seeking for issuance of legal heirship certificate for her deceased brother Dayalan. As seen from the impugned order, no opportunity of hearing has been granted to the respondent. However, the learned Additional Government Pleader appearing for the respondents, on instructions, would submit that an opportunity of hearing was granted and the statement of the petitioner was also recorded. But the same is not reflected in the impugned order. Therefore, it has to be construed that no opportunity of hearing was granted to the petitioner in the impugned proceedings.

4. The learned Single Judge of this Court in a decision dated 06.04.2022 passed in W.P.No.12220 of 2022 referred to supra has also considered the circular and thereafter, held that



the case of the petitioner therein will not fall under any of the categories mentioned in the said circular. The case of the petitioner also does not fall within any of the categories mentioned in the aforementioned circular which has been extracted supra. The petitioner, as seen from the legal heirship certificate of her deceased father, is the sister of the deceased Dayalan, for whom, the legal heirship certificate was sought. When there is clinching evidence to show that the petitioner is the sister and the deceased Dayalan died as a bachelor, the respondent ought to have considered the same and only thereafter, taken a decision as to whether the petitioner is entitled for legal heirship certificate or not. However, the clinching evidence produced by the petitioner has not been considered under the impugned order, by which, the petitioner's application seeking for issuance of legal heir certificate was rejected. It has been consistently held by this Court in various decisions including the decision rendered by me that any circular issued by the Department will have to have legal sanctity i.e., it must be in accordance with the statutory provision. No statute prohibits the respondent from issuing legal heirship certificate for Class II legal heir. However, if the circular imposes such a stipulation, it will not have any legal sanctity. Since no opportunity of hearing was granted to the petitioner, there is no necessity for the petitioner to file a statutory appellate remedy. Further, the impugned order is a non-speaking order with regard to the contention raised by the petitioner and with regard to the documents submitted by the petitioner which evidences that the petitioner is the sister of the deceased who died as a bachelor .

5. For the forging reasons, the impugned order dated 24.12.2020 passed by the respondent is quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner including granting her the right of personal hearing. The respondent is directed to pass a final orders within a period of twelve weeks from the date of receipt of a copy of this order.

6. With the aforesaid direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vsi



To

The Tahsildar,
Aminjikarai Taluk,
Chennai - 600 030.

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+1cc to M/s.K.V.Sundararajan, Advocate, S.R.No.36502

+1cc to the Government Pleader, High Court, Madras, S.R.No.36451

W.P.No.14921 of 2022

SJ(CO)
RLP(28/06/2022)