



W.P.No.26866 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.26866 of 2018

Ayub Zainuddin

... Petitioner

Vs

1.The District Collector,
No.62, Rajaji Salai,
Chennai – 600 001.

2.The Revenue Divisional Officer,
Revenue Department,
Greater Chennai Corporation,
Chennai.

3.The Tahsildar,
Egmore – Nungambakkam Taluk,
Chetpet,
Chennai – 600 031.

4.The Tahsildar,
Mylapore – Triplicane Taluk,
Chennai.

5.Aysha

... Respondents



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Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order in Procs.No.(P6)/33880/2009 dated 15.06.2018 passed by the first respondent and quash the same and direct the first respondent to confirm the first legal heir certificate issued by the third respondent vide in R.Dis.C4/1516/2009.

For Petitioner : Mr.D.S.Ramesh

For Respondents :
For R1 to R4 : Mr.N.Naveen Kumar
Government Advocate

For R5 : No Appearance

ORDER

This Writ Petition has been filed to quash the impugned order passed by the first respondent in his proceedings Procs.No.(P6)/33880/2009 dated 15.06.2018 and for a consequential direction to direct the first respondent the District Collector to confirm the Legal Heirship Certificate issued by the third respondent bearing Ref.No.R.Dis.C4/1516/2009.

2. When the case was taken up for hearing, the learned counsel for the petitioner would submit that during the pendency of the present writ



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petition, the fifth respondent has died and that before the writ petition was filed, the fifth respondent had also given a consent affidavit which has been filed along with the typed set of papers. It is noticed that on 20.08.2009, the fifth respondent had obtained the Legal Heirship Certificate from the fourth respondent by including her name as a Legal Heir of Late Dr.A.K.Zainuddin, who died on 23.11.2008. Earlier on 03.02.2009, the petitioner along with the other legal heirs through the petitioner's mother by name Hafsa, who according to the petitioner is only the wife of his father Dr.A.K.Zainuddin, had obtained the Legal Heirship Certificate from the third respondent on 03.02.2009.

3. It is submitted that there was *inter se* litigation between the petitioner's mother and the children born out of the wedlock between his father Late Dr.A.K.Zainuddin and his mother Hafsa and the fifth respondent and that the parties have agreed to ultimately resolve the dispute amicably and to that effect, the fifth respondent has since died according to the petitioner, has given an affidavit. It is strange that an affidavit has been obtained from the fifth respondent, which is not notarized or executed before a Commissioner of Oath. Instead, the



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affidavit has been attested by an Advocate. These kinds of affidavit cannot be accepted as a evidence of the content.

4. Be that as it may, it is the case of the petitioner that the fifth respondent has also died during the pendency of the present writ petition. Under these circumstances, I am inclined to remit the case back to the first respondent to pass a fresh order after considering the informations that may be furnished by the petitioner. The first respondent may also call for a report from the third and fourth respondents before passing such order. While, passing such order, the first respondent shall also consider observations which were recorded in the impugned order that the fifth respondent had resolved the dispute and compromised.

5. This Writ Petition stands disposed of with the above observations. No costs.

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Index : Yes/No
Speaking/Non-Speaking Order

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C.SARAVANAN, J.

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