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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 27.10.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.23526 of 2022
and
W.M.P(MD)No.17604 of 2022

Bazeer Koya

..Petitioner

Vs

The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the respondent in the Petitioner's Application No. TN-720220811321, dated Nil and to quash the same as illegal and consequently to direct the respondent to issue Class-II legal heirship certificate of the Petitioner's brother late Mohammed Ismail, son of Bazeer Mohamed.

For Petitioner :Mr.R.J.Karthick

For Respondent :Mr.D,Gandhiraj
Special Govt.Pleader

ORDER

The Petitioner has filed this Writ Petition seeking issuance of a Writ of Certiorarified Mandamus calling for the records relating to the



impugned order passed by the respondent in the Petitioner's Application No. TN-720220811321, dated Nil and to quash the same as illegal and consequently to direct the respondent to issue Class-II legal heirship certificate of the Petitioner's brother late Mohammed Ismail, son of Bazeer Mohamed.

2. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3. The case of the Petitioner is that the Petitioner is residing at the petition mentioned address and the Petitioner himself, his sisters Kathija, Mohammed Meera Ummal, Mohideen Beevi and his brother late. Mohammed Ismail are the legal heirs of his parents. The Petitioner's brother Mohammed Ismail died on 9.4.2015 and his wife Suraya Beevi also died on 10.7.2009 and they have no children and they died intestate. The Petitioner and his sisters abovementioned are the living legal heirs of his deceased brother Mohammed Ismail. During his lifetime, the Petitioner's brother purchased the petition mentioned properties and after demise of his brother, the Petitioner and his sisters tried to partition the said properties among themselves. Hence the Petitioner submitted an application on 11.8.2022 seeking legal heirship certificate and the same was rejected by the respondent stating that Class-II legal heirship certificate could not be issued. This Court in umpteen number of



judgments held that even class-II legal heir is entitled to legal heirship certificate and guidelines were also issued by the Government in this regard. Since the Petitioner's request for Class-II legal heir certificate was rejected, the Petitioner has come forward with the present Writ Petition.

4.As per the orders of the Full Bench of this Court in **W.P.Nos. 25247 of 2021 and batch of cases(P.Venkatachalam and others .vs. The Tahsildar, Kumarapalayam Taluk and others), dated 17.6.2022**,in Page No.112, Paragraph 65(f) and (6) it has been held as follows:

"F.The classification of persons as Class-I and Class-II heirs in Circular No.9 of 2019, dated 24.09.2019 and their application to the heirs of a deceased female Hindu or non hindu would lead to chaos. We find the entire edifice of the classification in the Circular is founded on a fallacy that the concept of Class-I and Class-II legal heirs which are applicable to the heirs of the deceased Hindu male under Section 8 of the Hindu Succession Act could be extended across the Board to all religions.

6.Consequently, the Government of Tamil Nadu is directed to issue fresh Government Order in lieu of Circular No.9 of 2019 without the anomalies pointed out, supra, in particular, the usage of expressions" Class-I and Class-II" legal heirs under the Hindu Succession Act, 1956. The Government will also consider incorporating a father, blood brother/sister as eligible applicants for unmarried deceased, as also the administrative remedies of appeal and revision found in paragraphs 9 and 10 of the existing Circular



No.9 of 2019.This exercise shall be completed within a period of six weeks from today."

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5.The Government has issued Government Order in G.O.(Ms)No. 478, Revenue and Disaster Management, Revenue Administration Wing, RA-3(2) Section, dated 29.09.2022, in this regard. As per the above Government Order,the legal heirship certificate of the deceased, in case of married persons, will include, father, mother, spouse, sons and daughters of the deceased and in case of issuance of legal heirship certificate in respect of unmarried persons, the legal heirs are the father, mother, brother and sister of the deceased person. The applicant should also produce the death certificate of the deceased and other documents such as Aadhaar Card, Voter ID Card, Passport, Bank Passbook/Postal Savings Book, Driving license, Pension Payment Order and any other similar document. It is also further stated that against the order of Tahsildar, an appeal petition can be filed to the respective Revenue Divisional Officer within a period of one year from the date of issuance/rejection of the application, as the case may be. Further, there is a gray area in the Government Order regarding legal heirs and it talks only about the classification of legal heirs and there is no clear-cut classification of the persons, who are the sisters and brothers of the deceased married or unmarried persons and that has to be decided by the authorities.



Government regarding the guidelines and procedures in this regard and based on the said clarification, the respondent is directed to consider the application already submitted by the Petitioner and pass appropriate orders based on the guidelines and further clarifications received from the Government and also in accordance with law. The Petitioner is also directed to produce the relevant Mohammedan law/guidelines in this regard for issuance of Class-II legal heirship certificate, to the respondent to enable him to do the same, as directed above, within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

27.10.2022

Index : Yes/No

Internet: Yes/No

vsn

To

The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.



6

V.BHAVANI SUBBAROYAN,J
vsn

ORDER MADE IN

W.P(MD)No.23526 of 2022

27.10.2022



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