



W.P.No.13610 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.04.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.13610 of 2023

and

W.M.P.No.13281 of 2023

Kamalam

... Petitioner

Vs

The Tahsildar,
Namakkal Taluk,
Namakkal District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ or order or direction in the nature of Writ of Certiorarified mandamus to call for the records relating to the Proceedings of the Respondent herein in O.Mu.10757/2016/A2, dated 15.09.2016 and quash the same and further direct the respondent herein to issue a legal heir certificate to the petitioner within time frame fixed by this Court.

For Petitioner ... M/s.S.Lakshmanasamy

For Respondent ... Mr.E.Veda Bagath Singh,
Special Government Pleader



W.P.No.13610 of 2023

ORDER

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This Writ Petition has been filed assailing the impugned proceedings of the respondent and for a direction to the respondent to issue a legal heir certificate to the petitioner within the time that may be stipulated by this Court.

2. Mr.E.Veda Bagath Singh, learned Special Government Pleader takes notice on behalf of the respondent.

3. The petitioner married one Rathinam and their marriage was solemnized on 12.06.1963. Out of the said wedlock, two sons were born. Due to some matrimonial dispute between the petitioner and her husband, they were living separately. While so, the petitioner's late husband had an illicit relationship with one Mahalakshmi, pursuant to which, two sons were born to them. After the demise of said Rathinam, the petitioner has applied for legal heirship certificate, however, her request was rejected vide impugned order dated 15.09.2016 on the ground that the name of Mahalakshmi who is alleged to have been the second wife of said Rathinam, has been included in the family card of the petitioner's husband. Challenging the said order, this Writ Petition has been filed.



W.P.No.13610 of 2023

WEB COPY

4. Learned counsel for the petitioner submits that though it is the claim of the respondent that the name of the second wife has been included in the family card of the deceased, however, the same cannot be a bar for issuing a legal heirship to the petitioner since her marriage with her deceased husband was subsisting when the petitioner's husband alleged to have entered into the second marriage. Without taking the above fact into consideration, the respondent has mechanically passed the present impugned order rejecting the claim of the petitioner which is not sustainable.

5. Learned Additional Government Pleader appearing for the respondent submits that the claim of the petitioner was rejected on the ground that the name of the second wife of the petitioner has been included in the family card of the petitioner's husband. Since, the issue with regard to the second marriage being a disputed question of fact, the proper course open for the petitioner is to approach the competent civil court and not this Court under article 226. Accordingly, he prays for dismissal of this Writ Petition.



W.P.No.13610 of 2023

WEB COPY

6. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. It is the case of the petitioner that out of the wedlock with one late Rathinam, she was blessed with two children. When the said marriage was subsisting, the petitioner's deceased husband entered into another marriage with one Mahalakshmi and has also included her name in the family card of the deceased. However, the said Mahalakshmi who is alleged to be the second wife of the deceased cannot be said to be the legal heir of the deceased. Further, mere inclusion of the name of the second wife in the family card of the deceased cannot be the basis for rejecting the claim of the petitioner for issuance of legal heirship certificate. Hence, there is no embargo on the respondent to issue legal heirship certificate to the petitioner in respect of her deceased husband.



W.P.No.13610 of 2023

8. In view of the above observation, this Court is inclined to set aside the impugned order dated 15.09.2016 and accordingly, the same is hereby set aside. The matter is remanded back to the respondent and the respondent is directed to conduct the enquiry with regard to issuance of legal heirship certificate and issue legal heirship certificate to the petitioner if it is otherwise in order, within a period of four weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition is allowed with the above direction. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

28.04.2023

Index: Yes/No

Internet: Yes

NHS

To

The Tahsildar,
Namakkal Taluk,
Namakkal District.



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W.P.No.13610 of 2023

M.DHANDAPANI, J.

NHS

W.P.No.13610 of 2023

28.04.2023