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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.22155 of 2021

S.Palaniammal

... Petitioner

Vs.

1.The Accounts General (A & E),
Office of the Accounts General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.

2.The Assistant Director,
District Survey Office,
Collectorate Campus,
Salem – 636 001.

3.The Tahsildar,
Tiruchengode.

... Respondents

PRAYER: This Writ Petition has been filed to issue a Writ of Mandamus to direct the 1st respondent to forthwith sanction all the amounts payable to the petitioner and her daughter who are the legal heirs of the deceased Mr.D.Sengodan and pass orders on the same.

For Petitioner : Ms.Ananda Gomathy Murugesan

For Respondents : Mr.G.Nanmaran, SGP for R2 & R3

Mrs.Selvarani for R1



ORDER

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The petitioner has filed this Writ Petition to issue a Writ of Mandamus to direct the 1st respondent to forthwith sanction all the amounts payable to the petitioner and her daughter who are the legal heirs of the deceased Mr.D.Sengodan.

2. Heard Ms.Ananda Gomathy Murugesan, learned counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader for R2 & R3 and Mrs.Selvarani, learned counsel for R1.

3. The petitioner claims to be a second wife of the deceased Government Employee D.Sengodan. She also got a judicial order in respect of her relationship status with the deceased employee. The grievance of the petitioner is that despite D.Sengodan died before 22 years, she is not able to get the provident fund and gratuity of the deceased as his lawful wife. The petitioner has filed a suit in O.S.No.54 of 1996 before the Family Court, Salem, in which, a decree has been passed on 27.08.1996 by declaring that the petitioner and her daughters



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are also the legal heirs of the deceased. In the petitioner's representation itself she has stated about the previous decrees obtained through the Civil Court and the suit filed by the petitioner for declaring her relationship status with the deceased D.Sengodan.

4. The petitioner fairly concedes that the deceased had an another daughter born through his first wife by name Gangeshwari. Another person by name Kamala, who also claims to be the third wife of the deceased is said to have filed a suit in O.S.No.306 of 2008 and that has been dismissed. The appeal filed challenging the above said judgment in A.S.No.8 of 2016 before the District Court, Namakkal, has also been dismissed. Under such circumstances, the respondents need not have any trouble in accepting the judgments of the Court as an authority about the legal status of the petitioner with the deceased D.Sengodan.

5. The circular of the Government in Circular No.11/2017, RA 5(3)/80/2017 dated 09.08.2017 issued by the Principal Secretary / Commissioner of Revenue Administration, the same has been interpreted



by the Madurai Bench of Madras High Court in the case of J.Ravi Vs.

The District Collector & Others in W.P.MD.No.18477 of 2020 dated 16.12.2020 and the general instructions of the Circular that has been interpreted in the above judgment and it reads as under:

"7. General Instructions:-

Tahsildars shall not issue legal heirship certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the legal heirship certificates.

(i) If more than one wife / husband exist for the deceased.

(ii) When there is a dispute for settlement / partition of properties of the deceased.

(iii) In case of the person treated as death who is missing for the period of 7 years or staying away from the family.

(iv) In the case of adopted child or no children.

(v) No certificate shall be issued under Indian Succession Act, 1925."

6. Since the petitioner's case also falls into one of the above general instructions, it is not possible for the petitioner to obtain the legal heir certificate from the Tahsildar.



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7. Even for any extraneous reasons, the Tahsildar has given any legal heir certificate, it can only reflect the opinion of the Tahsildar as regards the relationship of the persons mentioned in the certificates and nothing else in this regard. It is also relevant to refer the Full Bench Judgment of this Court held in the case of P.Venkatachalam and Ors Vs. The Tahsildar, Kumarapalayam Taluk, Namakkal and Ors in W.P.Nos.25247 of 2021 etc. batch dated 17.06.2022, wherein, the following answers have been given:

"65. To sum up, our answers to the questions formulated in paragraph 10, (supra) are as under:

A. Legal heirship is a status governed by the respective personal law of parties through various statutes. The certificate issued by the Tahsildar amount to nothing more than a relationship certificate reflecting the opinion of the Tahsildar as to the relationship of the applicant and others named therein with the deceased. Consequently, the certificate issued by the Tahsildar does not affect the legal right of any



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party and has no bearing on the status of a legal heir which is conferred on an individual under his / her personal law.

B. An administrative circular does not have the force of law and does not bind the citizen or the Court. They, however, bind the Tahsildar as a measure of ensuring administrative discipline and securing consistency in decision - making. The discretion of the Tahsildar is circumscribed by these administrative instructions which may be issued, from time to time, by the Commissioner of Land Administration.

C. Consequently, a writ of mandamus under Article 226 of the Constitution will not lie to direct the Tahsildar to issue a legal heirship certificate contrary to the terms of a circular. An exception to the aforesaid principle is where the circular, ex-facie, suffers from the vice of arbitrariness or perversity or runs counter to any provision of law. In such cases, it is open to the Court to ignore the circular and grant such relief(s) as may be permissible in law.

D. In the absence of any conflict with any primary or delegated legislation holding the field, G.O.Ms.No.581, Revenue Department dated 03.04.1987 casts a duty on the Tahsildar to issue a legal heirship



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certificate as per the norms and guidelines prescribed by the Commissioner of Land Administration. G.O.Ms.No.581, Revenue Department dated 03.04.1987 is undoubtedly a law as it has been issued in exercise of executive power under Article 162 of the Constitution of India. Consequently, when the Tahsildar keeps the application pending and does not decide on it one way or the other, a writ of mandamus may be issued by the High Court directing the Tahsildar to decide the application in terms of G.O.Ms.No.581, Revenue Department dated 03.04.1987 and the applicable circulars. The decisions in N.Dhanalakshmi (supra) and E.Thirumurthy (supra) to the extent that they hold that the Tahsildar has no power to issue a certificate of this nature, will stand overruled.

E. A legal heirship certificate issued by a Tahsildar cannot be equated to a succession certificate issued by a Court under Part X of the Indian Succession Act, 1925, in respect of the debt or securities. In this view of the matter, the High Court, in exercise of Article 226 of the Constitution of India, does not create any new mechanism as stated in the order of reference.

F. The classification of persons and Class - I and Class - II heirs in Circular No.9 of 2019, dated



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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 a deceased Hindu male under Section 8 of the Hindu Succession Act could be extended across the Board to all religions.

G. Consequently, the Government of Tamil Nadu is directed to issue a fresh Government Order in lieu of Circular No.9 of 2019 without the anomalies pointed out, supra, in particular the usage of the 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."

8. In view of the extraneous situation involved in the case, it is not appropriate for the respondents to insist upon the petitioner to



produce the legal heir certificate. Instead they can rely upon the judgment of the Civil Courts and pass necessary orders as to the disbursement of pension.

9. In view of the above stated reasons, this Writ Petition is allowed and the respondents are directed to consider the representation of the petitioner and pass appropriate orders in the light of the judgment that has been rendered in favour of the petitioner as to the relationship status of the deceased and pass orders as to the release of pension within a period of six weeks from the date of receipt of a copy of this order. No costs.

11.12.2023

Index : Yes

Internet : Yes/No

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R.N.MANJULA, J.

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To

1.The Accounts General (A & E),
Office of the Accounts General (A & E) Tamil Nadu,
No.361, Anna Salai,
Chennai 600 018.

2.The Assistant Director,
District Survey Office,
Collectorate Campus,
Salem – 636 001.

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3.The Tahsildar,
Tiruchengode.

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