



W.P.No.25247 of 2021 etc

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.02.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 25247, 27239, 27445, 27664, 28247, 28350, 15138,
16922, 18901, 22259, 25418, 26883, 27062, 27231 & 12962
of 2021

and

679, 797, 860, 1098, 1254, 860, 1910, 2655, 3186, 3230, 3275,
3498, 4117, 4335, 4443, 4878, 5192, 5608, 5695, 5747, 6642,
6727, 7005, 7090, 7251, 8259, 8262 & 8438 of 2022

and

W.P.Nos. 16946 of 2020 & 35697 of 2019

W.P.No. 25247 of 2021

P. Venkatachalam

..Petitioner

Vs.

The Tahsildar,
Kumarapalayam Taluk,
Namakkal District.

.. Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus to call for the records in impugned order passed by the respondent in Ref.No.Oo.Mu.0702/2021 A4 dated 21.04.2021 and quash the same and consequently direct the respondent to issue legal heirship certificate to the petitioner, based on the petitioner's representation dated 27.01.2021, within a stipulated time as fixed by this Court.



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Mr. S. Viswanathan, for Petitioner in W.P.No. 25247 of 2021
Mr. P. Krishnan, for petitioner in W.P.No. 25418 of 2021
Mr. K.G. Vasudevan, for petitioner in W.P. Nos. 27239 of 2021
Mr. K. Shyam Sunder, for petitioner in W.P.No. 27445 of 2021
Mr. N. Nathami, for petitioner in W.P.No. 27664 of 2021
Mr. P. Muthamizh Selvakumar in W.P.No. 28247 of 2021
Mr. A.S. Balaji, for petitioner in W.P.No. 28350 of 2021
Mr. Sam Jayaraj Houston, for petitioner in W.P.No. 16922 of 2021
Mr. Agnes Roselind Joseph, for petitioner in W.P.No. 18901 of 2021
Mr. T.v.G. Kartheeban, for petitioner in W.P.No. 22259 of 2021
Mr. G. Vivekanandan, for petitioner in W.P.No. 27231 of 2021
Mr. D. Jawahar, for petitioner in W.P.Nos. 12962 and 15138 of 2021
Mr. Parigopal, for petitioner in W.P.No.35697 of 2019
Mr. K. Govi Ganesh, for petitioner in W.P.No. 1910 of 2022
Mr. D. Rajagopal, for petitioner in W.P.No. 2655 of 2022
Mr. E. Udayachander, for petitioner in W.P.No. 3186 of 2022
Mr. J. Manikandan, for petitioner in W.P.Nos. 3230 & 3275 of 2022
Ms. T.K.S. Bharathy Shri, for petitioner in W.P.No. 4117 of 2022
Mr. A. Dev Narendran, for petitioner in W.P.No. 3498 of 2022
Mr. M. Rakrutheen, for petitioner in W.P.No. 4335 of 2022
Mr. M. Loganathan, for petitioner in W.P.No. 4443 of 2022
Mr. R. Rajesh Kumar, for petitioner in W.P.No. 4878 of 2022
Mr. S. Kamadevan, for petitioner in W.P.No. 5192 of 2022
Mr. S.S. Jeyaganeshan, for petitioner in W.P.No. 5608 of 2022
Mr. T. Muruganatham, for petitioner in W.P.No. 5695 of 2022
Ms. N. Parameswari, for petitioner in W.P.No. 5747 of 2022
Mr. A. Arun Kumar, for petitioner in W.P.No. 6642 of 2022
Mr. N. Vijayaraj, for petitioner in W.P.No. 6727 of 2022
Mr. V.S. Jagadeesan, for petitioner in W.P.No. 7005 of 2022
Mr. P.Saravanan, for petitioner in W.P.No. 7090 of 2022
Mr. N.A. Nissan Ahmed, for petitioner in W.P.No. 7521 of 2022
Mr. N. Ponraj, for petitioner in W.P.No. 8259 of 2022
Mr. R. Krishnaswamy, for petitioner in W.P.No. 8262 of 2022
Mr. P. Gunraj, for petitioner in W.P.No. 8438 of 2022
Mr. C.D. Johnson, for petitioner in W.P.No. 16946 of 2020
Mr. P. Muthamizhselvakumar, for petitioner in W.P.No. 27062 of 2021
Mr. Sharath P. Nair, for petitioner in W.P. No. 1254 of 2022
Mr. M. Vijayaragavan, for petitioner in W.P.No. 26883 of 2021
Mr. T. Sundaravadanam, for petitioner in W.P.No. 1098 of 2022
Mr. V.R. Thangavelu, for petitioner in W.P.No. 679 of 2022
Mr. D.Shivakumaran, for petitioner in W.P.No. 797 of 2022



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Mr. E. Sathiyaraj, for petitioner in W.P.No. 860 of 2022

For the Respondents : Mr. R. Neelakandan
Additional Advocate General
Assisted by
Mr. T. Seenivasan
Special Government Pleader and
Mr.S.J. Mohamed Sathik
Government Advocate
for R1 and R2 in W.P.No. 27445 of 2021

COMMON ORDER

All these writ petitions are listed before this Court consequent to a direction issued by the Hon'ble Full Bench on 17.06.2022.

2. Mr. Justice M. Dhandapani vide order dated 19.01.2022 in W.P.NO.25247 of 2021 (batch) had referred the following questions to be referred to the Hon'ble Division Bench:

" 1. When Sections 8 and 15 of the Hindu Succession Act speak in clear terms about the persons, who are the legal heirs of a deceased person and Sections 9 to 11 provide the manner in which Class II heirs would succeed to the property of a deceased person, inspite of the specific provision under the Act, could the issue be relegated to the Tahsildar for identifying the class II legal heirs for the purpose of issuing legal heirship certificate?

2. Can the High Court, sitting under Article 226 of the Constitution, create a different mechanism from the one already built



in under the Succession Act for obtaining succession certificate, for the mere reason that the mechanism provided under the Succession Act is cumbersome and time- consuming and involves precious judicial time?

3. In the absence of any challenge to Letter No. 1534, dated 28.11.1991 and Circular Instructions No. 11/2017, RA 5 (3)/80/2017 dated 9.8.2017, which prohibit the Tahsildar from issuing Class II Legal heirship certificates in case of certain disputed circumstances, which has formed the basis for rejection of the application for Class II Legal Heirship Certificate, would it be right on the part of this Court to given an affirmative direction under Article 226 of the Constitution to issue Class II Legal heirship certificate, sidelining the mandated procedure laid down under the Succession Act for obtaining such a certificate."

3. The Hon'ble Full Bench had the assistance of learned counsels and also Mr. R. Neelakandan, learned Additional Advocate General and finally after examining all the issues had answered the questions as follows:

" 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 certificates 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



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by the Tahsildar does not affect the legal right of any 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 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



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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 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 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."

4. Mr. R. Neelakandan, learned Additional Advocate General, has filed a status report whererin it is stated that in deference to the directions of the Hon'ble Division Bench, the Government had passed G.O.Ms. No. 478, Revenue & Disaster Management, Revenue Administration Wing, RA-3(2) Department on 29.09.2022.

5. One of the salient features of this particular Government Order was that it had recognized that Legal Heirship is a status governed by the respective personal law of parties through various statutes. The certificate only reflects the opinion of the Tahsildar as to the relationship of the applicant and others named therein with the deceased.

6. It must be appreciated that the Government had complied with the directions of the Hon'ble Division Bench and had also passed the Government Order.



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7. It must also be stated that the said Government Order has been of much assistance and issues related to legal heirship certificate are disposed in accordance with the guidelines provided by the Government Order.

8. All these writ petitioners have already applied for legal heirship certificates before the jurisdictional Tahsildar. The following directions are therefore given:

i) Each individual jurisdictional Tahsildar may revive the application already submitted by the applicant herein;

ii) If any order had already been passed by the jurisdictional Tahsildar, the said order is set aside and individual Tahsildars are directed to re-examine the entire issue afresh in the light of the G.O.Ms. No. 478 dated 22.11.2022 aforementioned.

Iii) If the Tahsildar is satisfied, then he/she proceed to grant legal heirship certificate to the individual applicants.

iv) If the Tahsildar entertains any doubt, he/she should not reject the grant of legal heirship certificate but rather must issue notice to that applicant and seek clarification and then pass an order, either way, with reasons.



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9. Since these applications before the Tahsildar are pending for a considerable period of time, it would only be appropriate that the individual jurisdictional Tahsildars endeavour to dispose of these applications on or before 31.03.2023 by following due procedure as stated above.

10. No further orders are required, Writ petitions stand disposed of. No costs. Consequently, W.M.P.Nos. 23468, 28328, 28732, 28959 & 28961 & 1356, 875, 2062, 3338, 3368, 3407, 5700, 6722 & 6813 of 2022, are closed.

23.02.2023

Index: Yes/no
mrn

To
The Tahsildar,
Kumarapalayam Taluk,
Namakkal District.



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C.V.KARTHIKEYAN, J.
(mrn)

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