



W.P(MD)No.90 of 2023

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 04.01.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P(MD)No.90 of 2023**

1.P.Premalatha  
2.Prabha Rani  
3.Subha Rani

... Petitioners

Vs

The Tahsildar,  
Virudhunagar,  
Virudhunagar District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the respondent in Mu.Mu. A1/378/2021 dated 05.02.2021 and quash the same and consequently direct the respondent to issue the legal heir certificate for the petitioners' deceased brother, namely, I. Thiliban (a) Deelepan, within the time fixed by this Court.

For Petitioners : Mr.H.Arumugam

For Respondent : Mr.M.Lingadurai  
Special Government Pleader



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## **ORDER**

Heard the learned counsel appearing for the writ petitioners and the learned Special Government Pleader appearing for the respondent.

2. The writ petitioners claim to be sisters of one I. Thiliban (a) Deleepan. The said I. Thiliban (a) Deleepan got married to one Jeyanthi in the year 2006 but the said marriage was dissolved in the year 2007. It is further states that I. Thiliban (a) Deleepan passed away in 2015. He did not have any children. In these circumstances, the petitioners applied to the respondent to issue them legal heir certificate. The said request was rejected primarily on the ground that the Tahsildar cannot issue legal heir certificate in favour of Class II legal heirs. Questioning the said order dated 05.02.2021, this writ petition has been filed.

3. As rightly pointed out by the learned counsel appearing for the petitioners, the issue is no longer *res integra*. The Hon'ble Full Bench in the decision reported in **(2022) 4 CTC 1 (P.Venkatachalam and Others Vs The Tahsildar, Kumarapalayam Taluk and Others)** held 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*



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*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 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*



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*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 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*



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*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. The learned Special Government Pleader brings it to my notice that based on the aforesaid Full Bench Judgment, the Government has issued circular vide Letter No.9633/RA-3(2)/2022-4 dated 28.09.2022.

5. In this view of the matter, the order impugned in this writ petition is set aside. The learned Special Government Pleader appearing for the respondent would further state that if the petitioners apply again through online mode, their request will be considered on merits and proper order will be



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passed after due enquiry. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. This writ petition is allowed accordingly. There shall be no order as to costs.

**04.01.2023**

Index : Yes / No  
Internet : Yes / No  
NCC : Yes / No  
MGA

To

The Tahsildar,  
Virudhunagar,  
Virudhunagar District.



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**G.R.SWAMINATHAN, J.**

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