



W.P(MD)No.8897 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.8897 of 2023

Pechiyammal

... Petitioner

Vs.

The Revenue Divisional Officer,
Revenue Divisional Office,
Aruppukottai,
Virudhunagar District.

... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to issue Death Certificate for the petitioner's husband who disappeared on 25.09.1996 to the petitioner.

For Petitioner : Mr.R.Murugappan

For Respondent : Mr.N.Muthu Vijayan,
Special Government Pleader



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ORDER

The Writ Petition has been filed in the nature of a Mandamus seeking a direction to the respondent /Revenue Divisional Officer, Aruppukottai, Virudhunagar District, to issue death certificate to the husband of the petitioner herein, who had disappeared on 25.09.1996.

2. In the affidavit filed in support of the writ petition, it had been stated that the husband of the petitioner, Jeevagan, who was a lorry driver, was driving a lorry bearing Registration No.TN-21-V-1112 on 25.09.1996. The lorry was loaded with ash. He was going to Dalmiapuram Cement Factory, Trichy District, from Mettur Thermal Power Station. However, he did not reach the destination. The Karumalaikoodal Police Station, Salem District had registered a case in FIR No.41 of 1996, but closed that case as undetectable, with the observation that the husband of the petitioner could have been abducted and murdered by kidnappers. The petitioner filed a Workman Compensation case in W.C.No.166 of 2007 before the Workman Compensation Commissioner, Trichy. But the same was dismissed on



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03.10.2012 on the ground that the petitioner had not proved the death of her husband. When a person goes missing, the law provides a reasonable presumption to be drawn that he could be dead, if he is missing for a period of seven years. This reasonable presumption, remains a presumption till the person reappears in life and form. There cannot be any proof of death. There can only be proof of missing of the person and proof that he has not come back or reappeared. When that circumstance, supervenes then there is a presumption that the person is dead.

3. In the instant case, I hold that the reasoning of the Workman Compensation Commissioner, Trichy, placing the burden on the petitioner to prove the death of her husband is legally wrong and unsustainable. But this Court is not sitting in Appeal over the said order. However, the petitioner is granted permission to file a suit for declaration about the presumption of her husband's death. I am extremely conscious of the fact that the issue of limitation would be put against the petitioner herein. But where the petitioner has suffered owing to the death of her husband and had taken reasonable steps seeking compensation and FIR



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had also been filed, not only merely as a Court of law, but as a Court of justice assistance should extended of to those who seek relief. Here, there is no rival claimant so far as the deceased husband is concerned. It is a fact that he was disappeared. It is a fact that he was a lorry driver. It is the a that he disappeared and did not reach the destination. It is a fact that FIR was registered. It is also a fact that the police did not enquire and further had given an observation that he could even be murdered after being abducted by the kidnappers. The petitioner has been left high and dry. It is for the Court of law to come to her rescue.

4. Therefore, I would place a direction that necessary suit may be filed seeking such a declaration and a report may be obtained from the Karumalaikoodal Police Station, Salem District, relating to the FIR No.41 of 1996 and thereafter, necessary orders may be passed by the concerned Presiding Officer, wherever and whenever, the suit is filed. But an obligation is placed on the petitioner herein, to institute such a suit within a period of four weeks from the date of receipt of a copy of this order.



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5. It is also represented by the learned Special Government Pleader Mr.N.Muthu Vijayan, and this Court places its appreciation for such representation, that till date, the Karumalaikoodal Police Station, Salem District, who had registered FIR No.41 of 1996, had not issued any “Non-traceable Certificate”. It is stated that the cause for institution of the suit would arise only when that particular certificate is issued. Therefore, the period of limitation could be explained by the petitioner herein, if such a suit is filed.

6. Giving that particular liberty to the petitioner herein, the Writ Petition stands disposed of. No costs.

05.06.2023

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

RM



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The Revenue Divisional Officer,
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C.V.KARTHIKEYAN, J.

RM

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