



W.P(MD)No.21161 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21161 of 2015

V.Senthamil Selvi

... Petitioner

Vs.

The Tahsildar,
Sathur,
Virudhunagar District.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in O.Mu.Aa2/8710/15, dated 17.07.2015, quash the same and consequently direct the respondent to issue Legal Heir Certificate to the petitioner.



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For Petitioner : Ms.Kalaiyarasi Bharathi

For Respondent : Mr.N.Satheesh Kumar,
Addl. Government Pleader.

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ORDER

Heard the learned counsel on either side.

2.One Tamilarasan passed away on 27.02.2015. The petitioner applied for issuance of legal heir certificate. According to the petitioner, she married the said Tamilarasan as per the Christian rites and customs. A child was also born through the wedlock. However, the respondent declined to issue the certificate on the ground that the deceased Tamilarasan was twice married vide memorandum dated 17.07.2015. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioner asserted that the petitioner alone is the legally wedded wife and that refusal to issue legal certificate is arbitrary. He called upon this Court to set aside the impugned order and grant relief as prayed for.



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4.The learned Additional Government Pleader submitted that the impugned memorandum does not call for interference. He also would point out that the writ petition suffers from the vice of non-joinder of necessary party. The objector Rukumani has not been impleaded as one of the respondents. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Following the judgment of the Hon'ble Full Bench of the Madras High Court, the Government of Tamil Nadu had issued G.O.(Ms)No.478, Revenue and Disaster Management Department dated 29.09.2022 containing guidelines for issuance of legal heir certificate. It also contains the procedure for deciding the applications. Of course, the impugned memorandum was issued long before issuance of G.O.(Ms)No.478 dated 29.09.2022. While I would not test the impugned order in the light of the subsequently issued government order, what is obvious is that the respondent had rejected the petitioner's application merely on the ground that the deceased was twice married. The respondent did not even consider the materials placed by the writ



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petitioner before him. In the typed set of papers, the petitioner has enclosed some materials. The Tahsildar must undertake a summary enquiry. If the materials placed by the objector are of some probative value, then parties can be relegated to move the jurisdictional Civil Court. If on the other hand, the objector is not in a position to place any material, the Tahsildar has to necessarily ignore the objection and issue legal heir certificate as sought for by the applicant. I am conscious that the Tahsildar cannot assume the role of the Civil Court but some kind of an enquiry ought to have been made. In this case, even without making any kind of enquiry, the petitioner's request met with an arbitrary rejection.

6. In this view of the matter, the order impugned in this writ petition is set aside and the matter is remitted to the file of the respondent. The respondent shall hold a proper enquiry. Notice will be issued to all the interested persons. The petitioner can also be directed to cause paper publication. The Tahsildar will take a call at the end of the enquiry. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order.



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This writ petition is allowed on these terms. No costs.

27.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

The Tahsildar,
Sathur,
Virudhunagar District.



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G.R.SWAMINATHAN, J.

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