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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.02.2023

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.21798 of 2021

V.Mangai

... Petitioner

v.

1.The District Collector,
Madurai District, Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai District.

3.The Revenue Inspector,
Sathamangalam, Madurai District.

4.The Village Administrative Officer,
Madurai North, Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2nd Respondent in his proceedings in Na.Ka.No.5655/2021/A5 dated 23.11.2021 and quash the same and consequently direct the 2nd Respondent to issue Legal Heir Certificate for the deceased Muthaiah based on the application submitted by the petitioner on 24.09.2021.



For Petitioner : Mr.K.Maharajan
For Respondents : Mr.M.Lingadurai,
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The learned counsel for the petitioner fairly informs the court that the petitioner's brother got married. But the marriage was dissolved through customary mode some thirty years ago and the current whereabouts of the petitioner's brother's erstwhile wife is not known. It is also submitted that the the petitioner's brother died without leaving behind any children. The petitioner now seeks issuance of legal heir certificate on the ground that she is a class-II legal heir. The second respondent rejected her request on the ground that the petitioner cannot claim legal heir certificate. Challenging the memo dated 23.11.2021, the present writ petition has been filed.

3.The issue on hand is no longer res integra. The Hon'ble Full Bench of the Madras High Court in the decision reported in **2022 (4) CTC 1 (P.Venkatachalam and Ors. vs. The Tahsildar, Kumarapalayam Taluk and Ors)** held as follows :



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“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 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.



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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 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



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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.”

Pursuant to the said decision, Government of Tamil Nadu has issued certain guidelines vide Letter No.9633/RA-3(2)/2022-4 dated 28.09.2022. In this view of the matter, the memorandum impugned in this writ petition is set aside. The matter is remitted to the file of the second respondent. The second respondent will hold an enquiry afresh. After satisfying himself that the petitioner is the sister of the deceased Muthiah, he shall issue legal heir certificate. I make it clear that I have not made any pronouncement as to who can be included in the legal heir certificate. It is for the Tahsildar, the second respondent to satisfy himself after due enquiry. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of copy of this order.



4.This writ petition is allowed. No costs.

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Index : Yes / No
Internet : Yes/ No
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To

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G.R.SWAMINATHAN, J.

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