



W.P.(MD)No.5747 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.5747 of 2016

S.Thangasamy

... Petitioner

Vs.

The Tahsildar,
Taluk Office,
Agastheeswaram,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the communication in Na.Ka.No.C3/2069/2015 dated 25.02.2016 and quash the same and consequently direct the respondent to conduct enquiry based on the representation dated 03.08.2015 of the petitioner along with relevant documents.

For Petitioner :Mr.S.Siva Thilakar

For Respondent :Mrs.D.Farjana Ghoushia
Special Government Pleader



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ORDER

The petitioner assails an order dated 25.02.2016 of the Tahsildar by which his request for a legal heirship certificate in respect of his brother, Paulsamy, was rejected.

2. The petitioner states that his father died on 10.03.2004 and his mother died on 16.07.2006. One of his brothers, S.Krishna samy, died prior to his parents on 30.06.2000. Another brother, Paulsamy, died on 03.03.2009. According to the petitioner, both his brothers died as bachelors and did not have children.

3. After the demise of his father, the petitioner states that the properties of the family were partitioned in terms of partition deed dated 21.06.2004. As per such partition, the A schedule property was allotted to the petitioner and the B schedule property was allotted to his brother Paulsamy. Consequently, the petitioner states that he is entitled to his brother's property upon his brother's death because his brother did not have any other legal heir. In these circumstances, the petitioner submitted a



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representation dated 03.08.2015, which was rejected by the impugned order.

Hence, this writ petition.

4. Learned counsel for the petitioner adverted to the above facts and contended that the impugned order is unsustainable in as much as the only reason specified therein for rejecting the petitioner's request is that he is not a direct legal heir. In this connection, learned counsel relies upon the earlier orders of this Court, whereby the Tahsildar concerned was directed to consider an application submitted by Class II legal heirs by conducting an enquiry.

5. Learned Special Government Pleader submits that a Government Order has been issued in G.O.Ms.478 dated 29.09.2022 in relation to the consideration of an application for the grant of legal heirship certificate to Class II legal heirs.

6. The submission of learned counsel for the petitioner that an application for grant of legal heirship certificate to a Class II legal heir



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cannot be summarily rejected is liable to be accepted. As held in earlier orders of this Court, if such application is received, the Tahsildar is required to conduct an enquiry to ascertain whether there is any dispute between the legal heirs. If there is no dispute, the Tahsildar may issue such certificate. On the contrary, if there is a dispute, the parties should approach the jurisdictional civil court.

7. For reasons set out above, the impugned order is unsustainable and is hereby quashed. Consequently, the petitioner is granted leave to re-apply by producing all relevant documents before the Tahsildar. Upon receipt thereof, the Tahsildar is directed to conduct an enquiry by providing a reasonable opportunity to all parties who may be affected by the decision and issue a reasoned order within a period of four weeks from the date of receipt of such application from the petitioner. The said application shall be considered in light of G.O.Ms.No.478 dated 29.09.2022.



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8. Accordingly, W.P.(MD).No.5747 of 2016 is disposed of without any order as to costs.

29.03.2023

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

To

The Tahsildar,
Taluk Office,
Agastheeswaram,
Nagercoil,
Kanyakumari District.



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SENTHILKUMAR RAMAMOORTHY, J.

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