BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.27634 of 2022

P.Stella ... Petitioner

Vs.

1.The District Collector,
Thanjavur District.

2.The Revenue Divisional Officer,
Tiruchendur Taluk, Thoothukudi District.

3.The Tahsildar,
Tiruchendur Taluk, Thoothukudi District..

4.The Village Administrative Officer,
Paramakurichi Village,
Tiruchendur Taluk,
Thoothukudi District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the online impugned rejection order dated 30.08.2022 of the 3rd respondent in Application Number : TN/720220829735, dated 29.08.2022 of the petitioner and quash the same as illegal, arbitrary, unconstitutional, unjust and without jurisdiction and consequentially pass an order directing the 3rd respondent to issue a legal heir certificate of deceased T.Jebakumar S/o.Thangaraj who is the brother of the petitioner by considering her application No.TN/720220829735, dated 29.08.2022.

For Petitioner : Mr.J.Priscilla Pandian

For Respondents : Mr.AK.Manikkam,
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner claims to be sister of one Jebakumar who died on 11.04.2022. According to the petitioner, her sister Vigilapauline and herself are the surviving legal heirs. They come under Class-II legal heirs. When they submitted an application for legal heir certificate, the third respondent declined to entertain the same. The petitioner was called upon to move the jurisdictional civil court. Challenging the stand of the revenue authority, this writ petition has been filed.

3.As rightly pointed out by the learned counsel for the petitioner, the issue is no longer res integra. The Hon'ble Full Bench of this Court in the decision reported in 2022 (4) CTC 1 (P. Venkatachalam and Ors. vs. The Tahsildar, Kumarapalayam Taluk and Ors) held as follows :

> "65.To sum up, our answers to the questions formulated in paragraph 10, (supra), are as under:
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> 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.

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 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."

4.In this view of the matter, the order impugned in this writ petition is set aside. The matter is remitted to the file of the jurisdictional Tahsildar. The third respondent shall issue notice to the petitioner and hold an enquiry and pass final orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of copy of the order. This writ petition is allowed on these terms. No costs.

05.01.2023

Index : Yes / No
Internet : Yes/ No
skm

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G.R.SWAMINATHAN, J.

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