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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

WP.No.906 of 2024 and
WMP.No.937 of 2024

B.S.Krishnamurthy

... Petitioner

VS.

The Tahsildar,
Guindy Taluk,
Guindy,
Chennai-600 032.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a writ Certiorarified Mandamus to call for the records of the Impugned order of rejection of the Respondent dated 14.12.2023 on the Legal heir Application of the Petitioner bearing Application No.TN-7202312011336 dated 01.12.2023 submitted through E-Seva Online and quash the same as illegal and arbitrary and consequently direct the Respondent to issue Class II legal heir Certificate of the Petitioner's deceased brother B.S.Sambamurthy within a time frame as stipulated by this Court.

For Petitioner : Mr.S.Vijayaraghavan
for Mr.R.Nageswara Rao

For Respondent : Mrs.Geetha Thamaraiselvan



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Special Government Pleader

ORDER

The petitioner is aged about 70 years presently and the younger brother of late B.S.Sambamurthy, who had passed away on 10.02.2015. His brother was married to one Uma, who had pre-deceased him on 14.05.2001. The couple had no issues. The petitioner's brother passed away intestate on 10.02.2015 leaving behind the petitioner and his sister Bhagyalakshmi as sole surviving legal heirs. The parents of the petitioner have pre-deceased his brother.

2.In the aforesaid circumstances, the petitioner has made an application to the respondent for issuance of legal heirship certificate of late B.S.Sambamurthy. The application was sent on 10.04.2023. Since there was no response, an online application had been filed on 01.12.2023. That application has come to be rejected on 22.12.2023 by way of the present impugned order. The petitioner alleges violation of the principles of natural justice insofar as no notice was issued prior to passing of the impugned order.

3.That apart, the reasoning set out in the order is that B.S.Sambamurthy had been married and hence the petitioner is not a direct legal heir. The application for legal heirship certificate has come to be rejected invoking G.O.(Ms).No.478 Revenue and Disaster Management Department dated 29.09.2022.



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4.The petitioner submits that there is absolutely no legal bar in this regard and the provisions of the Hindu Succession Act, 1956 support his claim for issuance of the legal heirship certificate as does the Government Order relied upon by the respondents.

5.The petitioner also relies on a decision of the Writ Court in the case of *Josephine Maria Yogamalar v. Tahsildhar, Perambur Taluk Office, Perambur, Chennai-600 011* (WP.No.23473 of 2023 dated 10.08.2023), where, in similar circumstances, the matter has been remanded to the file of the Tahsildar for consideration afresh. The petitioner would submit that effect has been given to that order and legal heirship certificate issued in similar circumstances as in the present case as well.

6.Per contra, Mrs.Geetha Thamaraiselvan, learned Special Government Pleader has written instructions, again invoking G.O.Ms.No.478, to state that Tahsildars are not empowered to issue legal heirship certificates in cases of the deceased having been married. There is the critical distinction which the authorities have failed to note which is that there is no bar to the issuance of the certificate in cases where the spouse was either deceased/divorced.

7.In the present case, as in *Josephine Maria Yogamalar* (supra), the spouses are deceased/divorced. Thus, and in the absence of a spouse, there is no hindrance to the issuance of legal heirship certificate. In the case of *Josephine Maria Yogamalar*



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(supra), a certificate has been issued to her on 01.09.2023.

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8. So too in this case, the spouse of B.S.Sambamurthy had passed away on 14.05.2001. Mandamus is hence issued to the respondent to issue a legal heirship certificate to the petitioner and his sister Bhagyalakshmi after ascertaining whether there are any other legal heirs who would be so entitled. This exercise will be completed within a period of four (4) weeks from date of receipt of a copy of this order.

9. This writ petition is allowed. No costs. Connected miscellaneous petition is closed.

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vs

Index:Yes/No

Speaking order

Neutral Citation:Yes

To

The Tahsildar,
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Guindy,
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DR. ANITA SUMANTH,J.

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