



WEB COPY



1

W.P.(MD)NO.5252 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.5252 of 2024

and

W.M.P.(MD)No.5038 of 2024

R.Janaki

... Petitioner

Vs.

1. The Tahsildar,
Palayamkottai Taluk,
Tirunelveli District.

2. R.Sundari
3. S.Ramalakshmi
4. S.Raja Lakshmi

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in O.Mu.A4/2694/2023 dated 27.06.2023 passed by the first respondent and quash the same and consequently direct the first respondent to issue legal heir certificate for Mr.S.Ramachandran.

For Petitioner : Mr.K.K.Udayakumar

For R-1 : Mr.D.Sasikumar,
Additional Government Pleader.

For R-2 to R-4 : Mr.P.P.Alwin Balan

**ORDER**

WEB COPY

The petitioner's father has not been heard of for more than forty years. The petitioner was two years old when he went missing. She now seeks legal heir certificate for her father. The jurisdictional Tahsildar has taken the stand that the petitioner has to go before the civil court for relief. Challenging the said stand, the present writ petition has been filed.

2.I must straightaway observe that the course of action indicated by the first respondent is not feasible of compliance. It has been held that a bare suit for declaration that a person has not been heard for a certain number of years and that therefore, decree should be granted that he is presumed to have died is not maintainable. The consistent view of the courts has been that such a relief will not fall within the scope of Section 34 of the Specific Relief Act, 1963 which provides for invoking the court's jurisdiction for obtaining declaration of status or right (2022 AIR (Ker) 52, 2022 (1) LW.32, 2008 (3) LW.531, ILR 1948 Bom 633, SA No.194 of 2008 (Allahabad High Court, AIR 2021 Chh 20, ILR 1928 All 678, ILR 1928 LAH 467 and Vol 32 CAL WN 1084).



3.The real difficulty appears to be the guidelines provided in

G.O Ms No.478 Revenue and Disaster Management Department dated 29.09.2022 for issuance of legal heir certificate. It has been laid down therein that the applicant must enclose the death certificate of the deceased. In this case, the applicant is not in a position to produce death certificate. By invoking Section 108 of the Indian Evidence Act corresponding to Section 111 of BSA 2023, there can be a presumption of death but for issuing death certificate, date of death is necessary. There cannot be any presumption regarding the date of death. Since the death certificate must contain the date of death, the authorities cannot be expected to issue the same. But whether on this score, the applicant can be denied legal heir certificate is the moot point for consideration.

4.There is a well known legal maxim "*Lex Non Cogit Ad Impossibilia*" (Law does not compel a person to do that which he or she cannot possibly perform). The petitioner cannot obtain her father's death certificate. She is however entitled to invoke the presumption set out in Section 108 of the Indian Evidence Act, 1872 (corresponding to Section 111 of BSA,, 2023). The said provision is as follows :



“108. Burden of proving that person is alive who has not been heard of for seven years

When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”

When the petitioner can invoke the statutory presumption, she must be able to avail its benefits. I have already noted that on the strength of the presumption, the petitioner cannot obtain death certificate. Insisting on production of death certificate would amount to calling upon the petitioner to do the impossible. The petitioner should therefore be allowed to apply for legal heirship certificate.

5.The Hon'ble Kerala High Court in *Bindhu v. State of Kerala* [2022 AIR (Kerala) 52] held that the revenue authority ought to issue legal certificate if the person concerned has not been heard for more than seven years. The learned Judge followed an earlier ruling in *Rohini v. Tahsildar, Aluva East (2021) 4 KLT 743* in which it was held that even in a case where FIR has not been lodged, reporting the missing of an individual, the denial of legal heirship certificate would be arbitrary so



long as the competent authority does not affirm that the individual concerned is alive.

6.In *J.Babu v. Tahsildar (WP No.5940 of 2017 dated 27.07.2020)*, it was held as follows :

“19..... this Court time and again held that the Revenue Department cannot wash off their hands by merely asking the citizens to approach the Civil Court for redressing their remedies, which are otherwise ought to have been redressed by them. Such orders are passed by this Court taking note of the following facts : that the revenue department is having lower level officers, who are familiar with the people living in the concerned Village and there are revenue officers under the Tahsildar and also functioning in the villages and they would be in a position to know the members of the family ; that the village Administrative Officer is expected to know each and every family of the village and he cannot plead ignorance about the relationship ; that the village Administrative Officer is the Revenue Co-ordinating Officer of the Revenue and he must keep a close watch on the village and he should update his information; that the problem of issuing a legal heir certificate to class II heirs could be resolved, in case a



workable method is adopted by the revenue authorities ; that since enquiry has to be made, the Tahsildar can direct the parties to produce birth certificates indicating the relationship and he/she can also conduct an enquiry in the village level through the Village Administrative Officer and in case, at a later point of time, it is turned out to be a false claim, it is open to the Tahsildar to cancel the certificate and even criminal action can be taken.”

7. Section 34 of the Specific Relief Act, 1963 states that one can obtain the relief of declaration as regards the legal character, only if there is someone to deny the same or interested to deny the same. The petitioner cannot go to the civil court to obtain a declaration that her father is no more. Even if the petitioner arrays her relatives and obtains a decree, it is not binding on others including the local body or the governmental authorities. It would remain a paper decree (vide 2008 3 LW. 531). It is the jurisdictional Tahsildar who is competent as well as the appropriate authority to issue legal heir certificate.

8. In this view of the matter, the impugned order is set aside. The first respondent is directed to hold an enquiry. The learned counsel appearing for the petitioner submitted that the petitioner's mother is too



sentimental and that she cannot even imagine even at this point of time that her husband is no more. The first respondent shall permit the petitioner to file her mother's notarized affidavit stating that her husband (Thiru.Ramachandran) went missing some forty years ago and that he has not been heard since. Based on the said affidavit and the testimony of the witnesses and field enquiry, the first respondent on being satisfied that Thiru.Ramachandran has not been heard for more than seven years, issue legal heir certificate as sought for by the petitioner. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

9.This writ petition stands disposed of. No costs.
Consequently, connected miscellaneous petition is closed.

14.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
SKM

To:

The Tahsildar,
Palayamkottai Taluk,
Tirunelveli District.



WEB COPY



8

W.P.(MD)NO.5252 OF 2024

G.R.SWAMINATHAN,J.

SKM

W.P.(MD)No.5252 of 2024

14.06.2024