BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 20/09/2024

CORAM

The Hon`ble Mr.Justice N.SATHISH KUMAR

WP(MD). No.9967 of 2024
and WMP(MD) No.9012 of 2024

A.Backiyalakshmi ... Petitioner

Vs

1. The District Collector,
Ramanathapuram District,
Ramanathapuram..

2. The Revenue Divisional Officer,
Revenue Divisional Office,
Ramanathapuram..

3. The Tahsildar,
Rameshwaram Taluk Office,
Rameshwaram..

4. The Tahsildar,
Sivagangai Taluk Office,
Sivagangai..

5. Vasanthi .S,
W/o. Radha,
Door No. 15/33,
Thittakudi Street,
Rameshwaram Taluk,
Ramanathapuram District 623 526. ... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent vide his proceedings in Mmu.Mu.(A4)/10994/2022 dated 13.03.2024 and quash the same as illegal and direct the respondents No. 1 and 2 to cancel the Legal Heir Ship certificate issued by the 3rd respondent vide his proceeding in Pa.Mu.A3/5519/16 dated 08.09.2016 standing in the name of 5th respondent and his father Late. Shanmugam and consequently directing the respondents 1 to 4 to issue new Legal Heir ship Certificate of the petitioner maternal grandmother deceased Mrs. Meenal, W/o. Late.Vellaichamy in favour of the petitioner and the 5th respondent by considering her application dated 27.09.2023 within the time stipulated by this Court.

For Petitioner	: M/s.S.Dhasaratharaman,
For Respondents	: Mr.A.Kannan for R1 to R4 Additional Government Pleader

ORDER

The writ petition has been filed challenging the impugned order passed by the 2nd respondent vide his proceedings in Mmu.Mu.(A4)/10994/2022 dated 13.03.2024 and direct the respondents No. 1 and 2 to cancel the Legal Heir Ship certificate issued by the 3rd respondent vide his proceeding in Pa.Mu.A3/5519/16 dated 08.09.2016 standing in the name of 5th respondent and his father Late. Shanmugam and consequently directing the respondents 1 to 4 to issue new Legal Heir ship Certificate of the petitioner maternal grandmother deceased Mrs. Meenal, W/o. Late.Vellaichamy in favour of the petitioner and the 5th respondent by considering her application dated 27.09.2023 within the time stipulated by this Court.

2. The petitioner has originally given an application to cancel the legal heir certificate granted in favour of the 5th respondent and re-issue the same by including her name. However, it was rejected.

3. The petitioner claims that she is also the granddaughter of the deceased Meenal. However, the 5th respondent has suppressed the same and has obtained the legal heirship certificate excluding the petitioner. Therefore, challenging the said certificate issued by the Tahsildar, an appeal has been filed before the 2nd respondent. The 2nd respondent, having found that there was suppression in obtaining the earlier legal heirship certificate and also recorded the fact that the petitioner is also one of the legal heirs of the deceased Meenal, dismissed the appeal on the ground of limitation citing that the appeal ought to have been filed

within a period of one year as per G.O.Ms.No.478 dated 29.09.2022. Challenging the said order, the petitioner is before this Court.

4. It is the contention of the petitioner that second respondent, having found that the petitioner is also one of the legal heir, on technical ground citing limitation, rejected the appeal.

5. However the learned Additional Government Pleader would submit that as against the order passed by the 2nd respondent as per the said G.O., revision would lie before the District Revenue Officer and without exhausting the said remedy, the writ petition has been filed and hence, the same is not maintainable.

6. I have considered the rival submissions and perused the materials available on record.

7. The fact remains that the 2nd respondent in fact recorded the factual aspect, which, in fact, substantiate the contention of the petitioner and having recorded the factual finding, only on the ground of limitation

based on G.O.Ms.No.478, the order of dismissal has been passed. In the aforesaid G.O., there is no limitation prescribed and only the guideline and procedure for issuance of legal heir certificate has been enumerated. In the annexure to the said G.O., certain guideline and procedure for issuance of legal heir certificate have been suggested by the Government. Hence Clause 7 of the said suggestion reads as follows:

> *"7.The following provisions for appeal/revision is provided for the aggrieved persons:*
>
> *7(1). Appeal:*
>
> *Against the order of the Tahsildar, an appeal petition can be filed to the respective revenue divisional officer within a period of one year from the date of issuance/rejection of the application, as the case may be.*
>
> *7(2) Revision:*
>
> *The power of revision over the orders passed by the Revenue Divisional Officer lies with the District Revenue Officer and Revision petition shall be filed within a period of 1(one) year from the date of passing of the order in appeal."*

8. From the above, it is clear that against the order of the Tahsildar, an appeal can be filed before the Revenue Divisional Officer within a

period of one year from the date of issuance/rejection of the application and revision can be lie against the appeal to the District Revenue Officer and revision petition shall be filed within a period of one year from the date of passing of the order in appeal.

9. Perusal of the above is only guideline has statutory backing to correct or extinguish the right for the purpose of preferring an appeal.

10. Therefore, this Court is of the view that citing the guidelines, the right of appeal cannot be taken away. Having found that the petitioner's contention is factually correct, the second respondent ought to have decided the matter on merits, instead of adopting the technicalities, which clearly indicate that it is a mere avoiding of responsibility at the cost of justice.

11. In such view of the matter, the writ petition is allowed and the impugned order stands quashed and the matter is remitted back to the 2nd respondent, who shall give notice to either side, give opportunity to the parties and decide the issue on its own merits. The limitation will not

come in the way in deciding the same on merits within three months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

20.09.2024

NCC : Yes/No
Index : Yes/No

RR

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4. The Tahsildar,
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N.SATHISH KUMAR,J

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