



W.P(MD)No.11232 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 16.02.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11232 of 2020

and

W.M.P(MD)Nos.9829 of 2020 & 23461 of 2023

G.Rajagopalan

... Petitioner

Vs.

1.The District Collector,
Tenkasi District,
Tenkasi.

2.The Tahsildar,
Kadayanallur Taluk Office,
Tenkasi District.

3.G.Santhanalakshmi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in Na.Ka(A6)/4931/2019 dated 18.11.2019 on the file of the second respondent and quash the same as illegal and consequently direct the respondents 1 and 2 to include the petitioner's name in legal heir



W.P(MD)No.11232 of 2020

certificate in Pa.Mu.No.A5/616/2018 dated 14.03.2018 based on the representation dated 20.02.2020.

(Prayer amended vide order of this Court dated 14.02.2024 in W.M.P(MD)No.23459 of 2023 in W.P(MD)No.11232 of 2020).

For Petitioners : Mr.S.Kumar

For Respondents : Mr.V.Nirmal Kumar
Government Advocate for R.1 & R.2

Mr.A.Uthayakumar for R.3

ORDER

Heard both sides.

2.The petitioner is working in the Tamil Nadu State Transport Corporation (TNSTC). His biological parents, namely, G.Ramachandran and Govindammal had given the petitioner in adoption to one Govindan. The said Govindan was employed in air force and he had passed away. The grievance of the petitioner is that in the legal heir certificate issued by the jurisdictional Tahsildar, the wife and mother of the deceased alone has been shown as legal heirs and that he has been excluded. That led to filing of this writ petition.



W.P(MD)No.11232 of 2020

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and also took me through the materials enclosed in the typed set of papers. He pointed out that in the school records of the petitioner, Govindan had been mentioned as the petitioner's father as well as in the ID card of Govindan, the petitioner has been shown as his son. Therefore, the materials on record are clinching enough to warrant inclusion of his name in the legal heir certificate. He called upon this Court to grant relief as prayed for.

4.The learned Government Advocate appearing for the respondents 1 and 2 submits that it is not as if the Tahsildar on his own issued such a legal heir certificate. It was issued on the basis of the application made by the third respondent who is none other than the wife of Govindan. She had indicated only herself and her mother-in-law as the legal heirs and therefore the approach adopted by the second respondent cannot be faulted. He also drew my attention to G.O(Ms)No.478 Revenue and Disaster Management dated 29.09.2022 in which it has been stated that before issuing legal heir certificate in favour of adopted children, the



W.P(MD)No.11232 of 2020

Tahsildar must be satisfied that there was valid adoption. He therefore submitted that the petitioner should be relegated to move the jurisdictional civil Court. The learned counsel appearing for the third respondent does not have instructions as to the stand to be taken now.

5.I carefully considered the rival contentions and went through the materials on record.

6.A learned Judge of this Court vide order dated 06.02.2018 in W.P.No.27592 of 2017 (M.G.Mamtha & another Vs The Tahsildar) had held that a adopted child should be considered on par with the biological legal heir and his or her name ought to be included in the legal heir certificate. But then, as rightly pointed out by the learned Government Advocate, the claimant must show that there was valid adoption. In this case, no doubt the materials on record clearly point to the fact that Govindan had adopted the petitioner G.Rajagopalan as his son. I have no doubt on that scope. But then, whether that by itself would amount to valid adoption is a moot point for consideration. Section 7 of the Hindu Adoptions and Maintenance Act, 1956 states that if male hindu wants to



W.P(MD)No.11232 of 2020

adopt a son or daughter, he must take his wife's consent. In fact, the explanation is quite interesting. If the male has more than one wife, he must take the consent of all the wives. In this case, there is nothing on record to show that the consent of Santhanalakshmi was taken by Govindan before adopting the petitioner herein.

7.The learned Government Advocate would raise yet another objection. According to him, the Tahsildar cannot issue the legal heir certificate in favour of the petitioner because there is no registered or unregistered deed of adoption. Section 16 of the Hindu Adoptions and Maintenance Act, 1956 contains the presumption in favour of the registered documents relating to adoption. The said provision reads as follows:

“Presumption as to registered documents relating to adoption

Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has



W.P(MD)No.11232 of 2020

WEB COPY

*been made in compliance with the provisions of this Act
unless and until it is disproved.”*

From a reading of aforesaid provision one cannot come to the conclusion that execution of an adoption deed is mandatory for ensuring the validity of the adoption. There is no need for executing any formal deed of adoption. Section 6 of the Act contains the requisites of valid adoption. Section 6 reads as follows:

“6.Requisites of a valid adoption

No adoption shall be valid unless-

- (i) the person adopting has the capacity, and also the right, to take in adoption;*
- (ii) the person giving in adoption has the capacity to do so;*
- (iii) the person adopted is capable of being taken in adoption; and*
- (iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.”*

No where in the Act there is any insistence on execution of an adoption deed. Therefore, the case of the petitioner cannot be rejected on that ground.



W.P(MD)No.11232 of 2020

WEB COPY

8. Since there is nothing on record to show that consent of the third respondent was taken before adopting the petitioner and since the learned counsel appearing for the third respondent is not having any instructions on this Court, I dispose of the writ petition in the following terms:

- a) The petitioner is at liberty to submit a fresh application to the second respondent for issuance of legal heir certificate.
- b) The second respondent will issue notice to the petitioner as well as the third respondent and conduct an enquiry.
- c) If the third respondent accepts the case of the petitioner, the second respondent shall issue legal heir certificate incorporating the petitioner's name also.

9. The learned counsel appearing for the petitioner fairly states that one Prema has also staked claim that she is the adopted daughter. If the said Prema also wants to include her name in the legal heir certificate, her claim shall also be dealt with in the manner as that of the petitioner. If the third respondent disputes the claim of the petitioner and contends that her consent was not taken, then the second respondent will relegate the petitioner to go before the jurisdictional civil Court. The petitioner



W.P(MD)No.11232 of 2020

has to establish his case before the jurisdictional civil Court. Though the Tahsildar cannot adjudicate the question as to whether the consent of the third respondent was taken, the jurisdictional civil Court would definitely be having jurisdiction to decide the said issue. Even if the third respondent denies the petitioner's case before the civil Court, the civil Court can still render a finding in favour of the petitioner herein if it is satisfied on the basis of evidence adduced before it.

10.This writ petition is disposed of accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

To

1.The District Collector,
Tenkasi District,
Tenkasi.



W.P(MD)No.11232 of 2020

2.The Tahsildar,
Kadayanallur Taluk Office,
Tenkasi District.

WEB COPY



WEB COPY



W.P(MD)No.11232 of 2020

G.R.SWAMINATHAN, J.

MGA

W.P(MD)No.11232 of 2020

16.02.2024