



W.A.No.295 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A.No.295 of 2025

S.Sukumaran

... Appellant

Vs.

The Tahsildar,
Sholinganallur Taluk,
No.1, First Cross Street,
New Kumaran Nagar,
Sholinganallur – 600 119.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, pleased to set aside the order dated 25.11.2024 passed in W.P.No.34539 of 2024 by this Court, on the file of this Court and thus render justice.

For Appellant

: Mr.K.Ravi Anantha Padmanabhan
Senior Counsel
For Mr.V.Ashvath Neelakandan

For Respondent

: Mr.Vadivelu Deenadayalan
Additional Government Pleader



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J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 25.11.2024 passed in the writ petition in W.P.No.34539 of 2024. The writ petitioner is the appellant before this Court.

2. The writ of mandamus was instituted to direct the respondents to consider the representation dated 02.10.2024 and issue legal heir certificate of deceased Ms.P.Radha D/o. Late Mr.Sankara Menon, who resided at Plot No.46, Govindasamy Nagar, 4th Street, Madipakkam, Chennai – 600 091.

3. The Writ Court considered the ratio laid down by the Hon'ble Full Bench of this Court in the case of ***P.Venkatachalam vs. The Tahsildar, Kumarapalayam Taluk, Namakkal District***¹. Pursuant to the Hon'ble Full Bench judgment, the Government of Tamil Nadu issued a G.O.Ms.No.478, Revenue and Disaster Management, Revenue Administration Wing, RA-3(2) Section, dated 29.09.2022 and G.O.Ms.No.110, Revenue and Disaster

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Management, Revenue Administration Wing, RA-3(2) Section, dated 13.03.2024 framing guidelines for issuance of legal heirs certificates.

4. It is not in dispute that, as per Government orders and guidelines, in the event of death of an unmarried person, the Tahsildar is empowered to issue legal heir certificate by incorporating the names of parents and siblings (brothers and sisters) of the deceased. Pertinently, the Government order does not contemplate issuance of a legal heir certificate to the sons/daughters of predeceased siblings.

5. In view of the orders of the Government order issued pursuant to the Hon'ble Full Bench judgment of this Court, the Writ Court dismissed the writ petition by granting liberty to the petitioner to approach the Civil Court for securing necessary succession certificate.

6. Mr.K.Ravi Anantha Padmanabhan, the learned Senior Counsel appearing on behalf of the appellant would submit that the ratio laid down by the Hon'ble Full Bench has not been considered in a right perspective by the Government, while issuing the Government orders. When the brothers and sisters of the deceased are entitled for the legal heir certificate from the



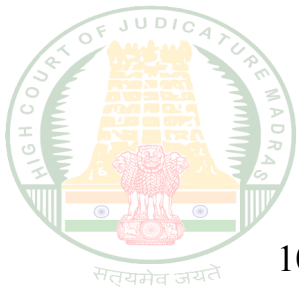
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Tahsildar, the siblings of the brothers and sisters cannot be denied legal heir certificate, as they are legally entitled to inherit the property of the deceased.

7. It is contended that once legal heir certificate is granted to Class-II legal heirs, incorporating the siblings in the legal heir certificate cannot be denied. Therefore, the Writ Court has not considered the consequential implications of the spirit of the judgment. Thus, this Court has to be considered the said issue.

8. The learned Additional Government Pleader appearing on behalf of the 'State' would oppose by stating that Tahsildars are empowered to issue legal heir certificates only to the brothers and sisters of the deceased. Therefore, the legal heir certificate cannot be issued by the Tahsildars beyond the scope of the Government order issued in pursuance to the judgment of the Hon'ble Full Bench of this Court in the case of ***P.Venkatachalam*** cited *supra*.

9. Considered the rival submissions made on behalf of the parties to the *lis* on hand.



10. The Hon'ble Full Bench of this Court, while answering the reference issued the following orders:

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

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



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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



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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



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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



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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. This exercise shall be completed within a period of six weeks from today.”

11. As per paragraph 65(c), a writ of mandamus would not lie to direct the Tahsildar to issue a legal heir certificate contrary to the terms of circular/Government order. Thus, the Hon'ble Full Bench made it clear that the Tahsildars cannot be authorised, nor can the High Court, in exercise of its powers of judicial review under Article 226 of the Constitution of India, issue directions to issue legal heir certificate beyond the terms stipulated under the Government order in force.

12. However, the Hon'ble Full Bench has stated that “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 provisions of law. In such cases, it is open to the Court to ignore the circular and grant such relief(s) as



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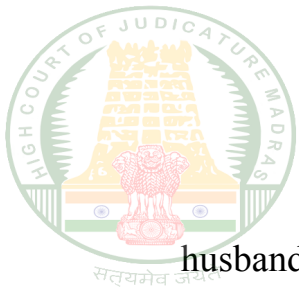
may be permissible in law”.

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13. The above answer from the Hon'ble Full Bench judgment cannot be misconstrued or misinterpreted. It is abundantly made clear that the Court is empowered to consider the arbitrariness, or perversity or violations of provisions of law in respect of any circular/Government orders. In the absence of any challenge of the circular or Government order, Courts will not read down the provisions of the Act, Rules or the Government order in force.

14. Therefore, the reference in paragraph 65(c) is to be construed for issuance of directions by the Courts only if the Government orders/circulars are under challenge. In all other circumstances, the terms stipulated in the Government orders are to be scrupulously followed by the Tahsildar.

15. The learned Senior Counsel for the appellant drew the attention of this Court, Section 15 of the Hindu Succession Act, 1956, stipulates that “The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16; (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the

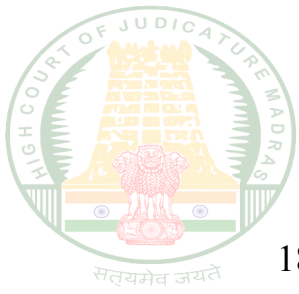


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husband. When Section 15 of the Hindu Succession Act contemplates that the son and daughter of the predeceased shall devolve the property right of the predeceased there is no impediment for the Tahsildar to issue legal heir certificate to the children of predeceased siblings.

16. In respect of the above argument raised on behalf of the appellant, the Full Bench held in paragraphs 65(A) that “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”.

17. In view of the above answer given by the Hon'ble Full Bench, the rights of the son and daughter of sibling of the predeceased are not affected and therefore, the said argument made on behalf of the appellant stands rejected.



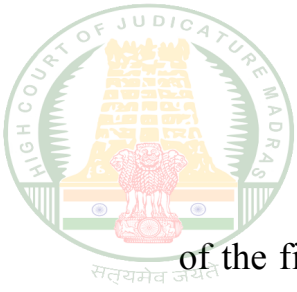
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18. The power to grant legal heir certificate is a delegated power granted by the Government to the Subordinate Revenue Authority. Such delegated power and its scope cannot be expanded by the High Court in exercise of its powers of judicial review under Article 226 of the Constitution of India.

19. The powers delegated by the Government must be exercised by the authorities concerned in stricto sensu, in terms of the conditions and eligibility prescribed. The Courts cannot expand the delegated power, which would undoubtedly derail the administrative powers delegated by the Government.

20. Therefore, the arguments advanced by the learned Senior Counsel that the High Court should expand the scope of the powers conferred under the Government order, is impermissible and thus, deserves no merit considerations.

21. The Writ Court, while dismissing the writ petition, granted liberty to the petitioner to approach the Civil Court for obtaining a succession certificate by establishing their right. We do not find any infirmity in respect



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of the findings of the Writ Court, which is in consonance with the reference made by the Hon'ble Full Bench and in accordance with the powers of the delegation conferred by the Government on the Tahsildars to issue legal heir certificates.

22. Thus, the Writ Appeal stands dismissed. There shall be no order as to costs.

[S.M.S., J.] [K.R.S., J.]
06.02.2025

Jeni

Index : Yes
Speaking order
Neutral Citation : Yes

To

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