

W.P.(MD)No.22184 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 15.12.2021

PRONOUNCED ON : 12.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.22184 of 2021

R.Govindaraj

... Petitioner

vs.

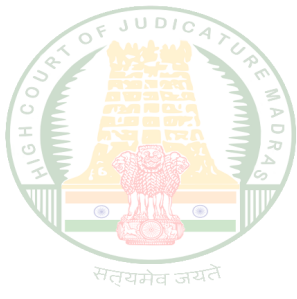
1.The District Collector,  
Collectorate, Madurai.

3.The Additional Chief Secretary/Commissioner  
Revenue Administration,  
Government of Tamil Nadu, Chennai.

... Respondents

(R3 impleaded *suo motu* by order of this Court dated 12.01.2022)

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the second respondent herein to issue a legal heirship certificate to the petitioner in respect of his elder brother, namely, deceased Jeyachandran, son of Ramanathan on the basis of the petitioner's representation, dated 29.07.2021 within a stipulated time fixed by this Court.



WEB COPY



W.P.(MD)No.22184 of 2021

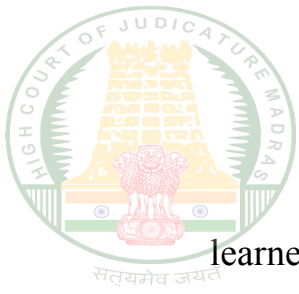
For Petitioner :Mr.D.Karthik Raja  
For Respondents :Mr.S.Shanmugavel  
Additional Government Pleader

## **ORDER**

This Writ Petition has been filed questioning the order refusing to grant legal heirship certificate on the ground that with respect to class-II heir, the Tahsildar, is not competent to grant legal heirship certificate. In this connection, a reliance is placed on a circular issued by the Additional Chief Secretary/Commissioner of Revenue Administration, Chennai. Since a decision will have to be made with respect to the said circular, it is only appropriate that the said official, namely, the Additional Chief Secretary/Commissioner of Revenue Administration, Government of Tamil Nadu, Chennai, is *suo motu* impleaded as respondent in the Writ Petition. The Registry may carry out necessary amendments in the cause title to the Writ Petition before issuing the order copy.

2.The petitioner seeks legal heirship certificate of his elder brother.

3.The issues raised in the Writ Petition have come to the consideration of the Courts earlier and there have been instances where,



W.P.(MD)No.22184 of 2021

learned Single Judges have opined that if Class-II legal heirs approach the revenue authorities/Tahsildar for issuing legal heirship certificate and when there are no rival claimants or anybody contesting the status of the applicant, then the Tahsildar after making due enquiry, must grant legal heirship certificate. It had been stated that it is reasonably expected that a Tahsildar or a Village Administrative Officer would know the particular details of the families residing in the village and therefore, an obligation is cast on such officers to examine the particulars stated in the application seeking legal heirship certificate and if it is found to be correct and true, the revenue officials can proceed further to issue legal heirship certificate.

4.It was opined that there was no necessity to refer those parties to the Civil Court, particularly, when there are no rival claimants. Institution of a suit would only be a cumbersome procedure and as a matter of fact, since there are no rival claimants, it would only be an exercise for the sake of it as there would no defendant questioning the status of the plaintiff seeking legal heirship certificate. The trial itself would only be perfunctory in nature, as the defendant/Tahsildar would



W.P.(MD)No.22184 of 2021

only be a formal party and the Court will have to go with the statement made by the plaintiff. It was therefore, held by learned Single Judges of this Court that instead of driving the parties to the Civil Court, the Tahsildar can very well examine the issue and grant legal heirship certificate.

5. In this connections, the following judgments can be referred to:

(i) In ***W.P(MD)No.15901 of 2018 [N.R.Raja and others Vs. The Tahsildar, Madurai South]***, by its order dated 03.08.2018, this Court had directed the respondent therein to grant legal heir certificate to Class – II legal heirs also. In the said decision, the issue with respect to issuance of legal heir certificate to Class – II legal heir had been elaborately dealt with. The relevant portion is extracted hereunder:

*“2.This Court had an earlier occasion to deal with an identical issue in W.P(MD) No.11721 of 2018, on 31.07.2018, and the relevant portion reads as follows:-*

*“2.Before analyzing the validity of the impugned order, it would appropriate to trace the powers of the second respondent in refusing to issue a Legal heirship Certificate to the Class-II legal heirs. There is no provision under the Registration of Birth and Deaths Act, 1969, or any other Act or Rules, empowering the Revenue Authorities to issue a Legal heirship Certificate. In the year 1981, a one man committee in District Revenue Administration suggested delegation of powers to the Tahsildar/Deputy Tahsildar for issuance of a Legal heirship*



WEB COPY



W.P.(MD)No.22184 of 2021

*Certificate and while accepting the recommendation, the Revenue Department in G.O (Ms) No.2906, dated 04.11.1981, had empowered the jurisdictional Tahsildar/Deputy Tahsildar to issue Legal heirship Certificate. Subsequently, by Letter (Rt) No.1534, dated 28.11.1991 issued by the Revenue Department, certain conditions were imposed for issuance of Legal heirship Certificate, wherein one of the conditions was that the Tahsildar should refrain from issuing the Legal heirship Certificate to Class-II legal heirs with a further direction to advise the applicant to approach the Civil Court seeking for remedy. Certain other guidelines were also appended to the said letter dated 28.11.1991.*

*3.It is submitted that in view of the Letter (Rt) No. 1534, dated 28.11.1991, the authorities had been refusing to issue Legal heirs Certificate for Class-II legal heirs and advising them to approach the Civil Court. The impugned order is one such order relying upon Letter (Rt) No.1534, dated 28.11.1991.*

*4.Subsequently, this Court, in various orders passed in writ petitions, have been deprecating the practice of the Tahsildars in refusing to issue the certificate for class-II legal heirs.”*

**(ii)In *M.Arumugam & Others vs. The Tahsildar, Madurai South,***

***Madurai and another*** reported in ***CDJ 2013 MHC 6017***, it had been

held as follows:-

*“9.The petitioners are claiming themselves to be class II heirs. The Tahsildar pleads his inability to consider the case, as according to him, it would be very difficult to collect the details of the class II heirs. I am not inclined to accept the said submission.*

*10.The Revenue Department is having lower level officers, who are familiar with the people living in the concerned Village. There are revenue officers under the Tahsildar. There are also village officers functioning in the villages and they would be in a position to know the members of the family. The village*



WEB COPY



W.P.(MD)No.22184 of 2021

*Administrative Officer is expected to know each and every family of the village. He cannot plead ignorance about the relationship. The village Administrative Officer is the Revenue Coordinating Officer of the Revenue Department. The Village Administrative Officer must keep a close watch on the village and he should update his information. 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. Since enquiry has to be made, the Tahsildar can direct the parties to produce birth certificates indicating the relationship. The Tahsildar can also conduct an enquiry in the village level through the Village Administrative Officer. 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. The difficulty to identify the members of the class II heirs cannot be a reason to reject the request for issuance of legal heir certificates. Therefore I am of the view that the first respondent was not justified in passing the impugned order. Accordingly, the impugned order is quashed.”*

(iii) In ***W.P.(MD)No.37214 of 2015 (T.S.Renuka Devi, rep by her***

***guardian and next friend K.Swaminathan vs. The Tahsildar, Mambalam***

***– Guindy Taluk, Chennai-78)***, it had been observed as under:-

*“5. Admittedly, Class I heirs of the said G.Parvathi predeceased her. It is not in dispute that the father of the petitioner is her only surviving legal heir. Therefore, as per the Schedule appended to the Hindu Succession Act, 1956, the petitioner being Class II legal heir, is entitled to succeed the property left out by the said Parvathi, if no other direct legal heir is available. In the enquiry, the respondent has also admitted the same, but he refused to issue a certificate to the petitioner. In my considered view, the order so passed by the respondent is not sustainable and hence, the same is liable to be set aside.*

*6. Accordingly, the writ petition is allowed and the order dated 05.12.2013 passed by the respondent is set aside. The*



WEB COPY



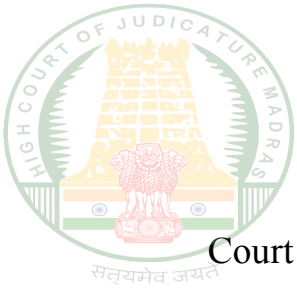
W.P.(MD)No.22184 of 2021

*petitioner is permitted to submit a fresh application along with a copy of this order within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent is directed to conduct enquiry by affording an opportunity of personal hearing to the petitioner in accordance with law, within a period of six weeks thereafter. No costs. Consequently connected miscellaneous petition is closed.”*

(iv) In ***W.P.(MD)No.5586 of 2017 (R.Lokesh Kannan Vs. The District Collector, Madurai District and another)***, it had been held as follows:-

*“5.It is the specific case of the petitioner that his brother died as a bachelor and except the petitioner, there are no legal heirs, since his parents have already passed away. In the judgment referred by the learned counsel for the petitioner, this Court has held that if Class -I heirs are not live, Class-II heirs are entitled to get the legal heirship certificate from the Competent Authority. Hence the application of the petitioner cannot be rejected merely on the ground that there is no direct legal heir of the deceased.”*

6.A reading of the extracted portions show that the learned Single Judges had opined that a Village Administrative Officer should be familiar with the people living in the concerned village and therefore, a workable method had to be adopted by the revenue authorities during the course of enquiry and if there are contestants or if the informations furnished are false, the parties will be directed to approach the Civil



W.P.(MD)No.22184 of 2021

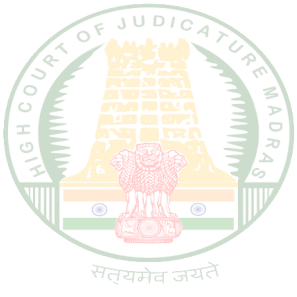
Court and a criminal action can also be initiated. However, the thrust of the judgment is that before rejecting the application seeking legal heirship certificate on the ground that the applicant is a Class-II heir, a preliminary enquiry must be done and if it is found that the facts furnished are true, then the revenue authorities can proceed further to issue legal heirship certificates as sought, and only when the facts are disputed or there is a rival claim, the parties should be directed to go before a Civil Court.

7.However, reference must also be made to a Division Bench judgment of this Court, namely, in *W.P.(MD)No.18477 of 2020* in *J.Ravi vs the District Collector, Trichy and others*. By an order, dated 16.12.2020, the Division Bench of this Court while examining a public interest litigation, wherein, a complaint was made that Tahsildars were issuing legal heirship certificates even when the deceased had two wives. The Division Bench extracted in full circular issued by the Government.

*“9. It is relevant to extract hereunder the Letter No.1534, dated 28.11.1991, issued by the Special Commissioner/Government Secretary, Revenue Department St.George Fort, Chennai-9:*

“பார்வை ஒன்றில் கண்டுள்ள அரசாணையில்





WEB COPY

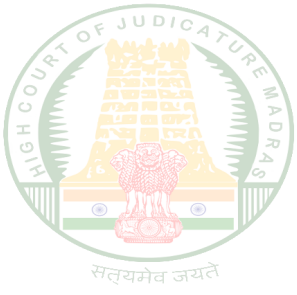


W.P.(MD)No.22184 of 2021

குறிப்பிட்டுள்ளபடி வட்டாட்சியர்கள் வாரிசுச் சான்றிதழ்கள் வழங்குவது தொடர்பாக சில வழிமுறைகள் வகுக்க மாநில கணக்காயர் வழங்கியுள்ள ஆலோசனையின் அடிப்படையில் சிறப்பு ஆணையர் மற்றும் வருவாய் நிர்வாக ஆணையருடன் கலந்து ஆய்வு செய்யப்பட்டது.

2. வட்டாட்சியர்கள், வாரிசுச் சான்றிதழ் வழங்குதல் தொடர்பான வழிமுறைகள் (guidelines) மற்றும் நடைமுறைகள் (procedure) பற்றி ஆலோசனை வழங்கியதுடன், அவ்வாறு வாரிசுச் சான்றிதழ் வழங்க ஓர் பட்டியையும் (format) குறிப்பிட்டுள்ளார். அரசு, வாரிசுச் சான்றிதழ் வழங்குதல் தொடர்பாக சிறப்பு ஆணையர் மற்றும் வருவாய் நிர்வாக ஆணையர் வழங்கியுள்ள ஆலோசனைகளையும் பட்டியையும் (format) ஏற்று அவைகள் செயல்முறைப்படுத்த ஒப்புதல் அளிக்கிறது. அவைகள் இக்கடிதத்துடன் இணைக்கப்பட்டுள்ளன. அவைகளைத் தவறாது பின்பற்றுமாறு கேட்டுக்கொள்கிறேன்.

3. சில வட்டாட்சியர் வழங்கும் வாரிசுச் சான்றிதழ்களில் “ஆறு மாதத்திற்கு மட்டுமே செல்லுபடியாகும் (valid for six months only) என்றும் “அவை உரிமை இயல் நீதிமன்றங்களில் செல்லாது (not valid in any court of law) என்றும் நிபந்தனை வாசகங்கள் எழுதப்பட்டிருப்பதாக தெரிகிறது. வட்டாட்சியர்களால் வழங்கப்படும் வாரிசுச் சான்றிதழ்களையும் நீதிமன்றங்களால் 1925 ஆம் ஆண்டு இந்திய நேரடி வாரிசுச்சட்டத்தின் கீழ் வழங்கப்படும் நேரடி வாரிசுச் சான்றிதழ்களையும் சமமாகக் கருத முடியாது. மேலும் நிபந்தனைகள் விதிப்பதற்கு விதிமுறைகளில் வகை இல்லை. எனவே, வாரிசுச் சான்றிதழ் வழங்கும்போது மேலே குறிப்பிட்டுள்ள நிபந்தனைகள் எதையும் விதிக்க வேண்டாம்



WEB COPY



W.P.(MD)No.22184 of 2021

எனக் கேட்டுக்கொள்கிறேன்.

4. மேற்கண்ட ஆணைகளின் அடிப்படையில், தொடர்புடைய அனைத்து அலுவலர்களுக்கு தகுந்த அறிவுறுத்தல்கள் வழங்குமாறும் கேட்டுக்கொள்கிறேன்.

5. இக்கடித்தினைப் பெற்றுக்கொண்டமைக்கான ஒப்புக்கையை உடன் அனுப்பி வைக்குமாறும் கோருகிறேன்.”

10. Similarly, it is relevant to extract hereunder the Circular No.11/2017, Rc.No.RA5(3)/180/2017, dated 09.08.2017 issued by the Principal Secretary/ Commissioner of Revenue Administration, Disaster Management and Mitigation Department, Chepauk, Chennai-600 005:

“ The Government have issued detailed instructions vide G.O.(Ms) No.2006, Revenue Department, dated 04.11.1981, G.O.(Ms) No.581, Revenue Department, dated 03.04.1987 and Government letter No.1534, Revenue Department, dated 28.11.1991 on the guidelines to be followed for issue of Legal Heir Certificate manually.

2) It is proposed to issue the Legal Heir Certificate through online web based application in addition to the other Revenue certificates. In order to enable quicker processing and for effective implementation, the following procedures and guidelines are issued to be followed.



WEB COPY



W.P.(MD)No.22184 of 2021

### **3.Direct Legal heir**

*Direct Legal heirs are sons, daughters, husband, widows, mothers, sons of a pre-deceased son, widows of a pre-deceased son, son of a pre-deceased sons of a predeceased son, and widows of a pre-deceased son of a predeceased son. Son of a predeceased daughter of a predeceased daughter, daughter of a predeceased daughter of a predeceased daughter, daughter of a predeceased son of a predeceased daughter, daughter of a predeceased daughter of a predeceased son.*

### **4.Procedure to be followed:**

*Legal Heir Certificates shall be issued by Tahsildars for all direct legal heirs applying for certificate through online. The petitioner can apply electronically from any of the CSCs or online to the Tahsildar in whose jurisdiction, the deceased person ordinarily resided before his death. (If the person has resided for less than 6 months, then the Tahsildar shall obtain a report from the Tahsildar in whose jurisdiction the deceased resided for more than a year).*

### **5.The applicant should compulsorily submit the**



WEB COPY



W.P.(MD)No.22184 of 2021

**following details while submitting the application:**

\* *Death certificate of the deceased or Late Registration Certificate from RDO.*

\* *Any one of the following documents should be submitted as Proof of residence of the deceased person.*

*(i) Aadhaar Card*

*(ii)Vote ID Card*

*(iii)Passport*

*(iv)Bank Pass Book/Postal Savings Book*

*(v) Driving License*

*(vi)Pension payment Order*

**5-1) If any one spouse survives-then they shall be the applicant and submit following documents:**

\* *Marriage Registration Certificate or Passport or Voter ID or Aadhaar cards or NPR document should be submitted to establish relationship.*

\* *Birth Certificate of all children or T.C., of all children*

\* *Self declaration of the spouse indicating all*



WEB COPY



W.P.(MD)No.22184 of 2021

*other legal heirs (including Mother-in-law if the wife is the applicant)*

***5-2) If parents are deceased, then any one child shall be the applicant and submit the following documents:***

***a) If applicant is a Major***

- \* Death certificate of parents*
- \* Birth certificate or Community Certificate or Passport or Aadhaar (all eligible heirs) or T.C., or NPR or Employee Service Record.*

***b) If applicant is a Minor, Guardian can apply and submit the following documents:***

- \* Death certificate of parents*
- \* Birth certificate or T.C., or NPR or Employee Service Record or Community certificate or Passport or Voter ID or Aadhaar of all eligible heirs.*

*\* Guardianship order issued by the Hon'ble Civil Court to prove relationship to the heirs.*

***5-3) In case of unmarried Children-Parents or Siblings shall be the applicant and submit the***



WEB COPY



W.P.(MD)No.22184 of 2021

**following documents:**

- \* *Death certificate of deceased.*
- \* *Any proof to establish relationship of deceased (ie.,) Birth certificate/T.C., of deceased etc.,*
- \* *Self-declaration of the parents/siblings.*

**6) Legal heir application will be processed by the following system:**

*On an application of fee of Rs.60/-, the applicant shall apply at the CSC or online, the certificate will be issued within 15 working days.*

*The work flow will be CSC - VAO – RI – HODT – Tahsildar*

*The VAO must verify the documents and recommended with reasons for acceptance or rejection and forward to the Revenue Inspector in 5 Days. Revenue Inspector has to enquire in 4 days and the certificate will be issued by Tahsildar in 6 days on receipt of report from the RI after conducting necessary enquiry.*

*The applicant can download the legal certificate from CSC or from anywhere on receipt of an SMS.*

*The District website should have an exclusive*



WEB COPY



W.P.(MD)No.22184 of 2021

*window for viewing Taluk wise issued legal heirship certificates.*

*A copy of the issued Legal Heir Certificate should be marked to Department of Registration to be linked to the Reginet Software.*

### **7.General Instructions:**

*Tahsildars shall not issue Legal Heir Certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the Legal Heir Certificates.*

*(i) If more than one wife/husband exist for the deceased.*

*(ii) When there is a dispute for settlement/partition of properties of the deceased.*

*(iii) In case of the person treated as death who is missing for the period of 7 years or staying away from the family.*

*(iv) In the case of adopted child or No children.*

*(v) No certificate, shall be issued under Indian Succession Act, 1925.*

### **8) Appeal Provision:**



WEB COPY



W.P.(MD)No.22184 of 2021

*If any legal heir disputes the issued Legal Heir Certificate, an appeal petition shall be filed to the respective Revenue Divisional Officer within a period of one year from the date of issue of the certificate for making alterations, corrections – deletions or inclusions.*

**9) Power of Revision:**

*The power of revision lies with the District Collector and Revision Petition shall be filed by the applicant within a period of 3 years from the date of issue of the appeal order.*

*All the District Collectors are instructed to follow the circular and communicate to the concerned subordinate officers and instruct them to follow the procedures and guidelines scrupulously without fail. The receipt of the circular may be acknowledged.*

*Sd/- K.Satyagopal  
Principal Secretary/  
Commissioner of Revenue Administration.”*

*12. The above proceedings would make it clear that the Tahsildars have got no power and jurisdiction to issue the Legal Heir Certificates, when the deceased had two wives during his life time and the parties have to be directed to approach the*





WEB COPY



W.P.(MD)No.22184 of 2021

*competent civil Court. Therefore, it is made clear that the Tahsildars shall not issue any Legal Heir Certificate contrary to the above proceedings.*

8.It is thus seen that the Division Bench of this Court had made it very clear that when the deceased had two wives during his life time, the parties will have to approach the Civil Court seeking legal heirship certificate.

9.However, I hold, following the reasonings of the consistent view in the judgment cited supra that when a brother or sister apply for legal heirship certificate of their deceased brother or sister who died without leaving any Class-I heir, then the same can be examined by the Tahsildar and legal heirship certificate can be issued, if there are no rival claimants.

10.It is for that purpose, this Court had *suo motu* impleaded the Additional Chief Secretary/Commissioner of Revenue Administration, Government of Tamil Nadu, Chennai. The said authority had issued the circular and a direction is issued to the said official to re-visit the circular and if there are no rival claimants, direct the Tahsildars to proceed to



W.P.(MD)No.22184 of 2021

issue legal heirship certificate.

WEB COPY

11.I hold that though in law, a brother or a sister would only be a Class-II legal heir, but if the deceased died a bachelor or a spinster or after marriage had died issueless and the surviving spouse had also predeceased him/her, then forcing a party to go to a Civil Court particularly when there is no defendant to contest the claim, would only be encouraging a legal fiction to be created. The suit would only be a mockery, as it would still be a plaint filed by plaintiff with no defendant and the Court will also proceed only on the basis of the facts pleaded and pass an order in accordance with the relief sought.

12.A judicial proceeding may not always be the proper forum to check *bona fide* of an application seeking legal heirship certificate. Rather the Tahsildar and/or the Village Administrative Officer as opined in the judgments referred supra would know the details of the family and would be in a better position to examine whether the applicant has come forward with a *bona fide* application or not. There cannot be a shifting of this burden to the Civil Court in all cases and the revenue authorities

18/21



W.P.(MD)No.22184 of 2021

have a duty to discharge in this regard. The Village Administrative Officers are in place only for this particular purpose. They have a duty and responsibility to discharge also. Therefore, the Additional Chief Secretary/the Commissioner of Revenue Administration is directed to revisit the circular as it had only resulted in driving an unfortunate claimant from pillar to post, having been driven to a Civil Court.

13.I would therefore issue the following directions:

13.1.A direction is given to the Tahsildar to examine the cases of the applicant in the following manner:

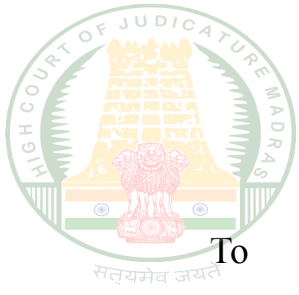
“If it is an issue of claiming legal heirship certificate for a deceased brother and when there are no rival claimants, make necessary enquiry and proceed to issue legal heirship certificate.”

14.With the above directions, this Writ Petition is allowed. No costs.

Index :Yes / No  
Internet :Yes  
cmr

**12.01.2022**

19/21



W.P.(MD)No.22184 of 2021

To

WEB COPY

- 1.The District Collector,  
Collectorate, Madurai.
- 2.The Tahsildar,  
Madurai North Taluk,  
Madurai District.
- 3.The Additional Chief Secretary/Commissioner  
Revenue Administration,  
Government of Tamil Nadu, Chennai.



WEB COPY



W.P.(MD)No.22184 of 2021

**C.V.KARTHIKEYAN, J.**

cmr

Pre Delivery Order made in  
W.P.(MD)No.22184 of 2021

12.01.2022

21/21