

WEB COPY



W.P.Nos.25247 of 2021, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 26.04.2022

DELIVERED ON 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

and

THE HONOURABLE MR. JUSTICE A.A. NAKKIRAN

W.P.Nos.25247 of 2021, 16946 of 2020, 12962, 15138, 16922, 18901, 22259,
25418, 26883, 27062, 27231, 27239, 27445, 27664, 28247 & 28350 of 2021,
679, 797, 860, 1098 & 1254 of 2022

and

W.P.Nos.35697 of 2019, 1910, 2655, 2913, 3186, 3230, 3275, 3498, 4117,
4335, 4443, 4878, 5192, 5608, 5695, 5747, 6642, 6727, 7005, 7090, 7521,
8259, 8262 & 8438 of 2022

and connected W.M.Ps.

W.P.No.25247 of 2021:

P.Venkatachalam

Petitioner

v.

The Tahsildar
Kumarapalayam Taluk
Namakkal District

Respondent

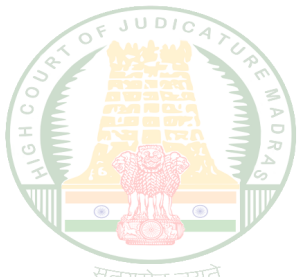
W.P.No.16946 of 2020:

M.Karikalan

Petitioner

v.

The Tahsildar
Office of the Tahsildar



W.P.Nos.25247 of 2021, etc. batch

Mannarkudi Taluk
Thiruvarur District
Respondent

W.P.No.12962 of 2021:

Rajan Mahadevan

Petitioner

v.

The Tahsildar
Mambalam Taluk
Chennai - 600 078
Respondent

W.P.No.15138 of 2021:

V.Mani

Petitioner

v.

1. The Tahsildar
Ayanavaram Taluk
Chennai - 600 102
2. The Head Quarters Deputy Tahsildar
Ayanavaram Taluk
Chennai - 600 102
Respondents

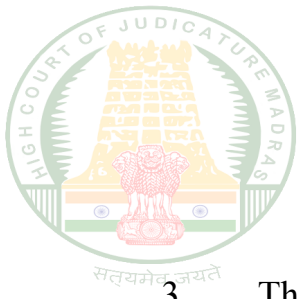
W.P.No.16922 of 2021:

Imran Khan

Petitioner

v.

1. The Revenue Divisional Officer
Chennai North, Tondiarpet
2. The Tahsildar
Tondiarpet
Chennai - 600 081



W.P.Nos.25247 of 2021, etc. batch

3. The Revenue Inspector
Tondiarpet
Chennai - 600 081

4. Mohammed Ismail.A

5. AyishaBeevi

6. Pareedha Bheevi M

Respondents

W.P.No.18901 of 2021:

Rita Abraham

Petitioner

v.

1. The Tahsildar
Aminjikai Taluk
Chennai

2. The District Collector
Singaravellar Malligai
Chennai

Respondents

W.P.No.22259 of 2021:

N.Sarala

Petitioner

v.

The Tahsildar
Taluk Office, Avadi
Chennai

Respondent

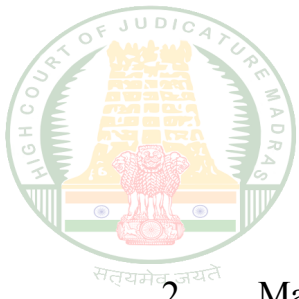
W.P.No.25418 of 2021:

M.Asirvadham

Petitioner

v.

1. The Tahsildar
Perambur Tahsildar Office
Perambur Taluk
Chennai - 600 011



W.P.Nos.25247 of 2021, etc. batch

2. Marthammal
WEB COPY

3. The Branch Manager
Oriental Bank of Commerce
No.824, Poonamallee High Road
Kilpauk, Chennai - 600 010

Respondents

W.P.No.26883 of 2021:

Annadurai

Petitioner

v.

The Revenue Tahsildar
Anthiyur Taluk
Erode District

Respondent

W.P.No.27062 of 2021:

Rasammal Loganathan

Petitioner

v.

1. The Thasildar
O/o.Thasildar
Nagapattinam District

2. The Village Administrative Officer
O/o.Nagapattinam Town
Nagapattinam Village

Respondents

W.P.No.27231 of 2021:

1. Juliet Mary
2. Philomina
Petitioners

v.

The Tahsildar
Perambur Taluk
Chennai

Respondent



W.P.Nos.25247 of 2021, etc. batch

W.P.No.27239 of 2021:

WEB COPY

N.Kannan

Petitioner

v.

The Tahsildar
Egmore Taluk Office
Spur Tank Road, M.S.Nagar
Mukta Gardens
Egmore, Chennai - 600 031

Respondent

W.P.No.27445 of 2021:

P.Subramaniyan

Petitioner

v.

1. The District Collector
Kallakurichi District
Kallakurichi
2. The Tahsildar Ulundurpet
O/o.Ulundurpet Taluk
Ulundurpet, Kallakurichi District

3. G.Mageshwari

Respondents

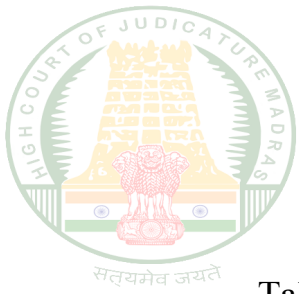
W.P.No.27664 of 2021:

N.Sethuraman

Petitioner

v.

1. Employees' Provident Fund Organization
3 Rajaji Road
Opposite Henkala Hotels
Tambaram West
Chennai - 600 045
2. The Tahsildar



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

Taluk Office -Aminjikai
Bharathipuram Main Road
Gajalakshmi Colony
Shenoy Nagar, Chennai – 30

Respondents

W.P.No.28247 of 2021:

R.Kavitha

Petitioner

v.

1. The District Collector
O/o.District Collector
SingaravellarMaligai
Chennai
2. The Thasildhar
O/o.PurasaivakkamThasildhar Office
(Perambur), Chennai
3. The Village Administrative Officer
Thasildhar Office, Perambur
Chennai

Respondents

W.P.No.28350 of 2021:

Anbumani

Petitioner

v.

1. The Tahsildar
Sriperumbudur Taluk
Tiruvallur Road, Sriperumbudur
Near Sriperumbudur Bus Stop
Kanchipuram - 602 105
2. The Revenue Inspector
Sunguvarchatram Revenue Firka
Sriperumbudur
Kancheepuram District

Respondents



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

W.P.No.679 of 2022:

S.Prabhakar

Petitioner

v.

The Tahsildar
Ayanavaram Taluk Office
Ayanavaram
Chennai 600 102

Respondent

W.P.No.797 of 2022:

S.Periasamy

Petitioner

v.

1. The District Collector, Salem
2. The Revenue Divisional Officer
Office of the Salem Collectorate
Salem District
3. The Tahsildar
Office of the Valapadi Tahsildar
Valapadi

4. Nirmala

Respondents

W.P.No.860 of 2022:

V.Sivakumar

Petitioner

v.

The Tahsildhar
Kancheepuram
Kancheepuram District

Respondent

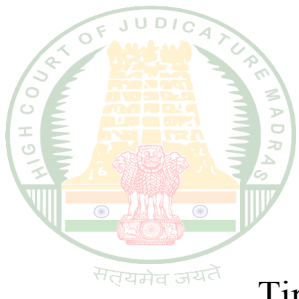
W.P.No.1098 of 2022:

G.Prabhakar

Petitioner

v.

1. The District Collector



W.P.Nos.25247 of 2021, etc. batch

WEB COPY
Tiruppur District

2. The Revenue Divisional Officer
Dharapuram, Tiruppur District
3. The Tahsildar
Dharapuram Taluk
Tiruppur District
4. N.Padmavathy

Respondents

W.P.No.1254 of 2022:

1. SalavudeenAhamath
2. Tahira.A
3. Kamruddin Ahmed

Petitioners

v.

The Tahsildhar
Velachery Taluk
Seva Nagar 1st Street
Soni Nagar
Periyar Nagar Extension
Seva Nagar, Velachery
Chennai - 600 042

Respondent

W.P.No.35697 of 2019:

M.Kalaimani

Petitioner

v.

1. The District Collector
District Collectorate Building
SingaravelarMaaligai
Rajaji Salai, Chennai
Pincode - 600 001



W.P.Nos.25247 of 2021, etc. batch

2. The Tahsildhar
Perambur Taluk Office
Chennai
Pincode - 600 011

3. The Revenue Inspector
Perambur Taluk Office
Chennai
Pincode - 600 011

Respondents

W.P.No.1910 of 2022:

Chinne Gowdu

Petitioner

v.

1. The Revenue Divisional Officer
Hosur, Krishnagiri District

2. The Tahsildar
Dhenkanikottai Taluk
Krishnagiri District

Respondents

W.P.No.2655 of 2022:

K.Mythily

Petitioner

v.

1. The District Collector
Collectorate
Kellys Road
Navalpur
Ranipet District
Ranipet - 632 401

2. The Revenue Divisional Officer
Ranipet to Vellore Main Road
Next to Ranipet Head Post Office
Ranipet District - 632 401



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

3. The Tahsildar
Walajahpet Taluk
Walajapet
Ranipet District - 632 513
4. The Village Administrative Officer
Seekarajapuram Panchayat
Walajapet Taluk
Walajapet
Ranipet District - 632 515

Respondents

W.P.No.2913 of 2022:

1. Ravi Shankar
 2. Lakshmi Narayanan
 3. Gopalakrishnan
 4. Palghat Narayan IyerSaishankar
 5. P.N.Udaya Shankar
 6. Vijayalakshmi
- Petitioners

v.

1. The Revenue Inspector
Velachery Taluk
Chennai – 600 042
2. The Thasildar Velachery
Seva Nagar 1stStreet, Velachery
Velachery Taluk, Chennai District
Tamil Nadu 600 042, India

Respondents

W.P.No.3186 of 2022:

M.Rani

Petitioner



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

1. The District Collector
Office of the District Collector
Tiruvallur District
Tiruvallur

v.

2. The Tahsildar
Office of the Thasildar
Ponneri Taluk
Ponneri

Respondents

W.P.No.3230 of 2022:

S.Mahalakshmi

Petitioner

v.

The Tahsildar
Office of the Tahsildar
Tiruvallur District

Respondent

W.P.No.3275 of 2022:

1. Rajesh.V
2. Ramesh.V

Petitioners

v.

The Tahsildar
Office of the Tahsildar
Aynavaram Taluk
Aynavaram
Chennai – 600 023

Respondent

W.P. No.3498 of 2022:

S. Athmanathan

Petitioner

v

1. The District Collector
Chennai District
Chennai



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

2. The Tahsildar
Ambattur
Chennai District

Respondents

W.P. No.4117 of 2022:

K. Hemavathi

Petitioner

v

The Tahsildar
Mylapore Taluk
Greenways Road
Chennai 600 028

Respondent

W.P. No.4335 of 2022:

S.R.Kothanayaki

Petitioner

v

The Tahsildar
Mylapore Taluk
Chennai 600 028
Respondent

W.P. No.4443 of 2022:

S. Maheswari

Petitioner

v

1. The District Collector
Kanchipuram District
Kanchipuram

2. The Tahsildar
Pallavaram Taluk
Chennai 600 044

Respondents

W.P. No.4878 of 2022:



W.P.Nos.25247 of 2021, etc. batch

WEB COPY Thomas Mathew

Petitioner

v

1. The Government of Tamil Nadu
Represented by its Secretary
Revenue Department
Secretariat, Chennai 600 009
2. The Tahsildar
Avadi Taluk
Modern City, Deena Dayalan Nagar
Pattabiram, Chennai
Tamil Nadu 600 054
3. HDFC Home Loan
HDFC Ltd. I Floor
ITC Centre, 760, Anna Salai
Chennai, Tamil Nadu 600 002
4. Kotak Mahindra Bank Ltd.
27, BKC C 27, G Block
Bandra Kurla Complex
Bandra (E), Mumbai 400 051

Respondents

W.P.No.5192 of 2022:

1. S. Selvi
2. S. Raja
3. S. Muruganantham

Petitioners

v

The Tahsildar
Ariyalur Taluk
Ariyalur District

Respondent

W.P. No.5608 of 2022:

1. Dr.V.S. Durairaj
2. Dr.S. Krishnakumari



W.P.Nos.25247 of 2021, etc. batch

3. Dr. V.S. Vijay
WEB COPY

Petitioners

v

1. The District Collector
Chennai

2. The Tahsildar
Aminjikarai Taluk Office
Chennai 600 030

Respondents

W.P.No.5695 of 2022:

Roopavathy

Petitioner

v

The Tahsildar
Ambattur Taluk
Ambattur
Chennai – 600 053

Respondent

W.P.No.5747 of 2022:

K.Sairam

Petitioner

v

1. The Additional Chief Secretary/
Commissioner of Revenue Administration
Government of Tamil Nadu, Chennai
2. The Tahsildar
Ayanavaram Taluk
Chennai – 600 102

Respondents

W.P.No.6642 of 2022:

L.B.Dilli Babu

Petitioner

v

1. The District Collector
Master Plan Complex
NH205, Tiruttani Highway
Tiruvallur District-602 001



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

2. The Tahsildar
Taluk Office
J.N.Road, NH716
Tiruvallur District

Respondents

W.P.No.6727 of 2022:

N.Balaji

Petitioner

v

1. The District Collector
Coimbatore District at
Coimbatore
2. The District Revenue Officer
Office of the District Revenue Officer (South)
Coimbatore District
3. The Tahsildar (South)
Coimbatore Taluk (S)
Hasur Road
Gopalapuram
Coimbatore 641 018

Respondents

W.P.No.7005 of 2022:

V.Sathiyathan

Petitioner

v

The Tahsildar
Maduravoyal Division
Nolambur, Chennai –37

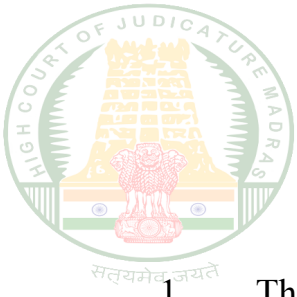
Respondent

W.P.No.7090 of 2022:

R.Ramachandran

Petitioner

v



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

1. The Tashildar
Taluk Office
St.Thomas Mount
Alandur, Chennai – 600 061
2. The Revenue Inspector
Pazhavanthangal
Chennai – 600 114
3. The Village Administrative Officer
Alandur
Chennai – 600 061

Respondents



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

W.P.No.7521 of 2022:

Noor Jahan

Petitioner

v

The Tahsildar
Egmore Taluk
No.88, Mayor Ramanathan Road
Chetpet, Chennai-3

Respondent

W.P.No.8259 of 2022:

Ramasamy Angappan

Petitioner

v

The Tasildhar
Erode, Erode District

Respondent

W.P.No.8262 of 2022:

K.Nirmal Kumar

Petitioner

v

1. The Tahsildar
Ponneri Taluk
Ponneri-601 204

2. The District Collector
Thiruvallur District
Thiruvallur

Respondents

W.P.No.8438 of 2022:

N.Kamala

Petitioner

v

The Tahsildar
Egmore-Nungambakkam Taluk Office
Chennai-600 031

Respondents



W.P.Nos.25247 of 2021, etc. batch

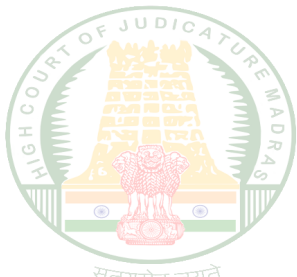
Prayer in W.P.No.25247 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records in the impugned order dated 21.04.2021 passed in Ref.No.Oo.Mu.0702/2021 A4 on the file of the respondent and quash the same and consequently, direct the respondent to issue legal heirship certificate to the petitioner, based on the petitioner's representation dated 27.01.2021, within a stipulated time.

Prayer in W.P.No.16946 of 2020: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records and quash the proceedings of the respondent in MU.MU.No.4637/2020/A6 dated 15.10.2020 and consequently, direct the respondent to issue a legal heirship certificate.

Prayer in W.P.No.12962 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records of the impugned order made by the respondent in Letter bearing No.D1/686/2021 dated 07.05.2021 and to quash the same as illegal and arbitrary and consequently, direct the respondent to issue a legal heirship certificate to the petitioner as per the Hindu Succession Act, 1956, within a stipulated time.

Prayer in W.P.No.15138 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the entire records of the 2nd respondent in connection with the impugned order of rejection in Na.Ka.No.A3/946/2021 dated 30.06.2021 and quash the same as arbitrary and unreasonable and consequently, direct the 1st respondent to issue legal heirship certificate of the petitioner's brother late V.Viswanathan, based on the petitioner's application dated 17.06.2021, within a stipulated time.

Prayer in W.P.No.16922 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records of the 2nd respondent, Tahsildar in his proceedings in letter no.A2/383/2021 dated 11.06.2021 rejecting the application of the petitioner for issuing legal heirship certificate and quash the same and consequently, direct



W.P.Nos.25247 of 2021, etc. batch

the 2nd respondent to issue legal heirship certificate to the petitioner and respondents 4 to 6 herein.

Prayer in W.P.No.18901 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus quashing the order dated 20.07.2021 passed by the 1st respondent based on the report of an officer dated 15.06.2021 and consequently, directing the 1st and 2nd respondents to issue a legal heirship certificate in favour of (1) Rita Abraham (2) Ranjith C Joseph (3) Ajith Thomas Joseph and (4) Shanthi Annette Joseph Samuel, as the legal heirs of the deceased Dr.Merlin Ceclia Joseph.

Prayer in W.P.No.22259 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records on the file of the respondent in his proceedings transaction reference No.TNCIT00000746399 dated 6th August 2019 and quash the same and consequently, direct the respondent to issue legal heirship certificate in favour of the petitioner, as the legal heir of the deceased Natarajan.

Prayer in W.P.No.25418 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the impugned order passed by the 1st respondent in Procs.No.B3/2372/2020 dated 25.10.2021 and quash the same, consequently, direct the 1st respondent to issue the Class-II legal heirship certificate for the death of the petitioner's brother viz., M.Anthony in the names of the petitioner and 2nd respondent.

Prayer in W.P.No.26883 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order passed by the respondent in memorandum No.O.Mu.1106/2021/A4 dated 05.03.2021 and quash the same and consequently, direct the respondent to issue II class legal heirship certificate based on the petitioner's representation dated 15.02.2021.

Prayer in W.P.No.27062 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents to



W.P.Nos.25247 of 2021, etc. batch

reconsider the legal heir application dated 05.03.2021 returned by the 2nd respondent.

Prayer in W.P.No.27231 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the impugned letter issued by the respondent bearing Na.Ka.No.C2/0296/2020 dated 06.03.2020 and quash the same as illegal and direct the respondent to issue relationship certificate incorporating the petitioners as sisters of the deceased.

Prayer in W.P.No.27239 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned reply from the Tahsildar, Egmore Taluk Office, the respondent herein, Ref.E/1884/2021 dated 07.10.2021 and quash the same and consequentially direct the respondent to issue the necessary legal heirship certificate for Class II heirs as per the Hindu Succession Act, 1956.

Prayer in W.P.No.27445 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned letter No.Na.Ka.A1/1807/2021 dated 28.09.2021 passed by the 2nd respondent insofar as it fails to include the name of the petitioner and quash the same and consequently, direct the 2nd respondent to furnish the new legal heirship certificate by adding the name of the petitioner P.Subramaniam and his son S.Sugumaran based on the representation dated 08.07.2021 as Class II legal heirs in certificate No.TN-720210714248.

Prayer in W.P.No.27664 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the 2nd respondent to issue Class II legal heirship certificate to the petitioner within a timeframe.

Prayer in W.P.No.28247 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents to issue the legal heirs certificate pursuant to the petitioner's representation dated 10.12.2021.



W.P.Nos.25247 of 2021, etc. batch

Prayer in W.P.No.28350 of 2021: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the first respondent to issue the legal heirship certificate to the petitioner on the basis of the petitioner's representation and the depositions of the Village Administrative Officer and the villagers mentioning the petitioner's sister Meera as the first wife (deceased) and the petitioner as second wife of the deceased Vedagiri.

Prayer in W.P.No.679 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the order dated 9th September 2021 passed by the respondent in Na.Ka.No.A3/2021 and quash the same and direct the respondent to issue legal heirship certificate to the petitioner.

Prayer in W.P.No.797 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents, especially the 3rd respondent to consider the petitioner's representation dated 21.10.2021 and pass appropriate orders according to law within a timeframe.

Prayer in W.P.No.860 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned rejection order in Na.Ka.No.1891/2019/A6 dated 06.09.2019 passed by the respondent and quash the same and consequently, direct the respondent to issue Class II legal heirship certificate of the deceased Munusamy dated 04.02.2012.

Prayer in W.P.No.1098 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the 2nd respondent to pass appropriate orders on the appeal dated 30.06.2021 made by the petitioner herein within a stipulated time.

Prayer in W.P.No.1254 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records pertaining to proceedings in Na.Ka.No.A4/0085/2020 dated 31.01.2020 passed by the respondent herein and to quash the same and direct the respondent to grant legal heirship certificate to the petitioners after holding necessary enquiry and by providing an opportunity of personal hearing.



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

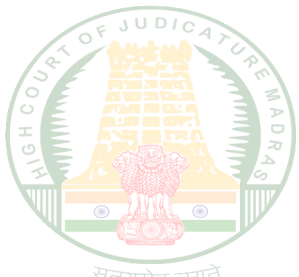
Prayer in W.P.No.35697 of 2019: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the second respondent to consider the petitioner's representation dated 14.08.2019.

Prayer in W.P.No.1910 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the impugned proceedings dated 22.07.2020 passed in O.Mu.1579/2020/B1 on the file of the 2nd respondent herein, which was confirmed by the impugned proceedings dated 20.12.2021 passed in Na.Ka.4557/2020/A4 on the file of the 1st respondent herein, to quash the same and consequently, direct the 2nd respondent herein to issue Class II legal heirship certificate of the deceased Sreenivasan, to the petitioner and his sisters Radhamma and Bayamma, within a stipulated period.

Prayer in W.P.No.2655 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents to consider the representation given by the petitioner dated 23.12.2021 and issue legal heirship certificate for the above mentioned legal heirs of late Kothandapani, who died on 20.05.2019 at Seekarajapuram, Walajapet Taluk, Ranipet District.

Prayer in W.P.No.2913 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the respondents culminated in the impugned order dated 04.07.2021 under application No.TN-7202103052226 passed by the 2nd respondent and quash the same and consequently, direct the second respondent to issue legal heirship certificate in favour of the petitioners as the legal heirs of Bhavani Sankar P.N.

Prayer in W.P.No.3186 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records relating to the rejection order passed on the petitioner's application dated 07.01.2022 for issuance of legal heirship certificate for the petitioner's brother G.Selvaraj, son of late Gangan in Na.Ka.195/2022/A6, dated



W.P.Nos.25247 of 2021, etc. batch

19.01.2022 passed by the 2nd respondent and to quash the same and to direct the 2nd respondent to issue legal heirship certificate based on the petitioner's application dated 07.01.2022, within astipulated time.

Prayer in W.P.No.3230 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus challenging the order passed by the respondent in Na.Ka.No.3396/2017/A7 dated 08.12.2017, quash the same and consequently, directing the respondent for issuance of legal heirship certificate and the relationship certificate as there are no rivals competing the issuance of the legal heirship certificate and also the fact mentioned by the petitioner are true in nature and in accordance with the law.

Prayer in W.P.No.3275 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus challenging the order passed by the respondent in Na.Ka.No.A3/1813/2021 dated 30.09.2021, quash the same and also consequently, directing the respondent to consider the petitioners for issuance of legal heirship certificate, as there are no rivals competing the issuance of the legal heirship certificate and also the fact mentioned by the petitioners are true in nature and in accordance with the law.

Prayer in W.P. No.3498 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the second respondent dated 22.11.2021 in proceedings bearing Oo.Mu.No.1684/2021/A2, quash the same and consequently, direct the second respondent to issue a legal heirship certificate in respect of S. Athmanathan, sister of S. Bhavani, within a stipulated time.

Prayer in W.P. No.4117 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the impugned order in O.Mu.No.A4/2679/2021 dated 09.11.2021 and quash the same and to direct the respondent to conduct proper enquiry and issue legal heirship certificate of late K. Vijaya to the petitioner and her brother.

Prayer in W.P. No.4335 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondent to



W.P.Nos.25247 of 2021, etc. batch

issue legal heirship certificate based on the petitioner's petition dated 13.09.2021.

Prayer in W.P. No.4443 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the impugned order dated 23.09.2021 passed by the second respondent in his proceedings Na.Ka.1485/2021/A4 and quash the same and consequently, direct the respondents to issue legal heirship certificate to the petitioner in terms of her application dated 07.07.2021.

Prayer in W.P. No.4878 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the second respondent to issue legal heirship certificate to the petitioner in lieu of the application made by the petitioner dated 12.07.2021 vide Petition No.2021/9005/01/100667/0712.

Prayer in W.P.No.5192 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records pertaining to the proceedings of the respondent in O.Mu.661/2021(A1) dated 15.02.2022 and quash the same and consequently, direct the respondent to grant Class-II legal heirship certificate in favour of the petitioners pursuant to the death of Thiru. S. Manikandan, S/o Subramanian.

Prayer in W.P. No.5608 of 2022: Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records of the second respondent in ,/1260/2021 dated 02.12.2021 and quash the same and consequently, direct the respondents to issue the legal heirship certificate to the petitioners.

Prayer in W.P.No.5695 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the proceedings of the respondent *vide* OO.MU.No.1169/2021/A2 dated 01.09.2021 and consequently, direct the respondent to issue legal heirship certificate on the demise of the petitioner's brother Jayakrishnan to the petitioner within a stipulated time.



W.P.Nos.25247 of 2021, etc. batch

Prayer in W.P.No.5747 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the rejection order on the petitioner's application for issuance of legal heirship certificate of his brother K.Gopinath in Na.Ka.No.A3/2690/2021 dated 11.02.2022 of the 2nd respondent to quash the same and direct the 2nd respondent to grant legal heirship certificate to the petitioner.

Prayer in W.P.No.6642 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorari calling for the records of the proceedings pursuant to the 2nd respondent in Petition No.2021/9005/01/961066/0622 on 02.09.2021 and quash the same as illegal and consequently, direct the 2nd respondent to issue legal heirship certificate to the petitioner forthwith.

Prayer in W.P.No.6727 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the records of the 3rd respondent relating to the impugned order O.MU.3518/2021/A5 dated 14.02.2022 and quash the same as illegal, arbitrary and devoid of merit subsequently directing the respondents 1 to 3 herein to issue legal heirship certificate to the petitioner.

Prayer in W.P.No.7005 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondent to issue legal heirship certificate in respect of V.Rajendrababu in favour of the petitioner V.Sathyanathan and his sister B.Vasantha in the light of the order passed in W.P.(MD)Nos.165 of 2022 & 21441, 21462 and 21656 of 2021.

Prayer in W.P.No.7090 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus direct the 1st respondent to issue legal heirship certificate to the petitioner within a stipulated time, in the light of this Court's order in W.P.No.20875 of 2019 by an order dated 09.03.2020.

Prayer in W.P.No.7521 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus calling for the



W.P.Nos.25247 of 2021, etc. batch

records of the respondent dated 07.01.2021 in E4/2233/2020 and quash the same and consequently, direct the respondent to issue legal heirship certificate of late Ahmed Hussain to the petitioner.

Prayer in W.P.No.8259 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondent to issue legal heirship certificate of the petitioner's deceased brother by name Krishnasamy, son of M.G.Angappan to the petitioner by considering the petitioner's representation dated 04.08.2021.

Prayer in W.P.No.8262 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of mandamus directing the 1st respondent to consider the representation dated 29.11.2021 made by the petitioner in accordance with law and thereby to furnish the legal heirship certificate for the petitioner's brother K.Mohan Kumar, in the name of the petitioner.

Prayer in W.P.No.8438 of 2022: Petition filed under Article 226 of Constitution of India to issue a writ of certiorarified mandamus to call for the records of the respondent's order of rejection dated 04.03.2022 of the Class II legal heir application dated 21.10.2021 and quash the same as illegal and arbitrary and consequently, direct the respondent to issue the Class II legal heirship certificate of the petitioner's deceased brother P.N.Sekar within a time frame.

For petitioner in W.P.No.25247 of 2021	Mr.S.Viswanathan
For petitioner in W.P.No.16946 of 2020	Mr.C.D.Johnson
For petitioner in W.P.No.12962 of 2021	Mr.D.Jawahar
For petitioner in W.P.No.15138 of 2021	Mr.K.Balasubramaniam
For petitioner in W.P.No.16922 of 2021	Mr.SamJayaraj Houston
For petitioner in W.P.No.18901 of 2021	Mr.AgnesRoselind Joseph
For petitioner in W.P.No.22259 of 2021	Mr.T.V.G.Kartheeban
For petitioner in W.P.No.25418 of 2021	Mr.P.Krishnan
For petitioner in W.P.No.26883 of 2021	Mr.M.Vijayaragavan
For petitioner in W.P.No.27062 of 2021	Mr.P.Muthamizhselvakumar
For petitioners in W.P.No.27231 of 2021	Mr.S.Udhaya Kumar
For petitioner in W.P.No.27239 of 2021	Mr.K.G.Vasudevan



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

For petitioner in W.P.No.27445 of 2021
For petitioner in W.P.No.27664 of 2021
For petitioner in W.P.No.28247 of 2021
For petitioner in W.P.No.28350 of 2021
For petitioner in W.P.No.679 of 2022
For petitioner in W.P.No.797 of 2022
For petitioner in W.P.No.860 of 2022
For petitioner in W.P.No.1098 of 2022
For petitioners in W.P.No.1254 of 2022
For petitioner in W.P.No.35697 of 2019
For petitioner in W.P.No.1910 of 2022
For petitioner in W.P.No.2655 of 2022
For petitioners in W.P.No.2913 of 2022
For petitioner in W.P.No.3186 of 2022
For petitioner in W.P.No.3230 of 2022
For petitioners in W.P.No.3275 of 2022
For petitioner in W.P.No.3498 of 2022
For petitioner in W.P.No.4117 of 2022
For petitioner in W.P.No.4335 of 2022
For petitioner in W.P.No.4443 of 2022
For petitioner in W.P.No.4878 of 2022
For petitioners in W.P.No.5192 of 2022
For petitioners in W.P.No.5608 of 2022
For petitioner in W.P.No.5695 of 2022
For petitioner in W.P.No.5747 of 2022
For petitioner in W.P.No.6642 of 2022
For petitioner in W.P.No.6727 of 2022
For petitioner in W.P.No.7005 of 2022
For petitioner in W.P.No.7090 of 2022
For petitioner in W.P.No.7521 of 2022
For petitioner in W.P.No.8259 of 2022
For petitioner in W.P.No.8262 of 2022
For petitioner in W.P.No.8438 of 2022

Mr.K.Shyam Sunder
Mr.T.S.Baskaran
Mr.P.MuthmizhSelvakumar
Mr.A.S.Baalaji
Mr.V.R.Thangavelu
Mr.D.Shivakumaran
Mr.E.Sathiyaraj
Mr.T.Sundaravadanam
Mr.SharathP.Nair
Mr.Parigopal
Mr.K.Govi Ganesan
Mr.D.Rajagopal
Mr.P.V.Balasubramaniam
Mr.E.Udayachander
Mr.J.Manikandan
Mr.J.Manikandan
Mr.A.Dev Narendran
Ms.T.K.S.Bharathy Shri
Mr.M.Bakrutheen
Mr.M.Loganathan
Mr.R.Rajesh Kumar
Mr.S.Kamadevan
Mr.K.S.Jeyaganeshan
Mr.T.Muruganantham
Ms.N.Parameswari
Mr.P.Rajendra Kumar
Mr.N.Vijayaraj
Mr.V.S.Jagadeesan
Mr.P.Saravanan
Mr.N.A.Nissar Ahmed
Mr.N.Ponraj
Mr.R.Krishnaswamy
Mr.P.Gunaraj

For respondents in all writ petitions
except W.P.Nos.2655 & 4443 of 2022

Mr.R.Neelakandan,
Additional Advocate General VIII



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

assisted by Mr.V.Ravi,
Special Government Pleader

For respondents in W.P.Nos.2655 &
4443 of 2022

Mr.R.Neelakandan,
Additional Advocate General VIII
assisted by
Mrs.GeethaThamaraiselvan,
Special Government Pleader

Amicus Curiae

Mr.Sharath Chandran

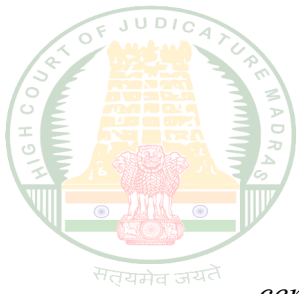
COMMON ORDER

P.N. PRAKASH, J.

This Full Bench has been constituted by the Hon'ble Chief Justice on a reference made by our learned brother Mr. Justice M. Dhandapani, *vide* an order dated 19.01.2022 in W.P.No.25247 of 2021 (batch), to answer the following questions:

“1) When Sections 8 and 15 of the Hindu Succession Act speak in clear terms about the persons, who are the legal heirs of a deceased person, and Sections 9 to 11 provide the manner in which class II heirs would succeed to the property of a deceased person, inspite of the specific provision under the Act, could the issue be relegated to the Tahsildar for identifying the class II legal heirs for the purpose of issuing legal heirship certificate?

2) Can the High Court, sitting under Article 226 of the Constitution, create a different mechanism from the one already built in under the Succession Act for obtaining succession



WEB COPY

certificate, for the mere reason that the mechanism provided under the Succession Act is cumbersome and time-consuming and involves precious judicial time?

3) In the absence of any challenge to Letter No.1534, dated 28.11.1991 and Circular Instructions No.11/2017, RA 5(3)/80/2017 dated 9.8.2017, which prohibit the Tahsildar from issuing Class II Legal heirship certificates in case of certain disputed circumstances, which has formed the basis for rejection of the application for Class II Legal Heirship certificate, would it be right on the part of this Court to give an affirmative direction under Article 226 of the Constitution to issue Class II Legal heirship certificate, sidelining the mandated procedure laid down under the Succession Act for obtaining such a certificate.”

2 At the outset, it is necessary to briefly set out the circumstances under which these matters have come up before us:

- a. In the State of Tamil Nadu, the Revenue authorities like the Tahsildar have been issuing legal heirship certificates to the family of a deceased person on the basis of inquiries conducted by the Revenue Inspectors, Village Administrative Officers, etc. The source of power to issue such certificates is not traceable to any statute or subordinate legislation.
- b. The proceedings of the erstwhile Board of Revenue dated 27.04.1979 prescribed the issuance of legal heirship certificates as one of the duties of the Tahsildar. After the Board of Revenue was abolished in 1980, the Government of Tamil Nadu issued G.O.Ms.No.581, Revenue Department, dated 03.04.1987 revising



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

the earlier duties and responsibilities prescribed for Revenue Divisional Officers and Tahsildars. The issuance of legal heirship certificates is enumerated as one of the duties of the Tahsildar in the Annexure to this Government Order.

- c. On 28.11.1991, the Special Commissioner for Revenue Administration issued a letter bearing No.1534 prescribing various guidelines for issuance of legal heirship certificates by Tahsildars. With the transition from manual to online web based applications for legal heirship certificates, the Principal Secretary, Commissioner of Revenue Administration, issued a circular bearing No.11/2017 dated 09.08.2017 prescribing detailed guidelines for the issuance of legal heirship certificates. Paragraph 7 of this circular prohibited the Tahsildar from issuing legal heirship certificates in respect of certain categories enumerated therein.
- d. The aforesaid guidelines were revised by Circular No.9 of 2019 dated 24.09.2019 issued by the Commissioner of Revenue Administration. This circular drew a dichotomy between Class-I (or what the circular terms as “direct”) legal heirs and Class-II (or “indirect”) legal heirs. Paragraph 8(i) of this circular prohibited the issuance of legal heirship certificates to Class-II legal heirs.
- e. The legal sanctity of these certificates came up for consideration before a learned single judge of this Court in **N. Dhanalakshmi v The District Revenue Officer, Salem and others**, decided on



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

08.08.1997, reported later in [2002 (2) CTC 228], wherein, it was held that these certificates had “no sanctity in law”. The same view was reiterated in **E. Thirumurthy v Collector of Chennai and others** [1998 Writ L.R 347]. However, in **K.M Abdul Jaffar v District Collector, Tirunelveli District and others**(2010 1 CWC 267), another learned single judge issued a mandamus to the Tahsildar to include certain names of persons as legal heirs in the legal heirship certificate issued by him on the basis of the personal law applicable to Muslims. In **E. Padma v The District Collector and others (2010 SCC OnLine Mad 1761)**, K. Chandru, J. dissented from the aforesaid decision and held that such a direction could not be issued under Article 226 of the Constitution of India, especially in view of the fact that there was no enforceable legal right conferred on a person to seek the issuance of these certificates.

- f. When matters stood thus, the issue of whether a mandamus could be issued to the Tahsildar to grant legal heirship certificates to Class-II legal heirs came up before the Madurai Bench in **M.Arumugam v The Tahsildar, Madurai South (2013 CDJ MHC 6017)**. A learned single judge of this Court held that brothers and sisters of a deceased male Hindu were indisputably Class-II legalheirs under Section 8 of the Hindu Succession Act, 1956. The Court held that it was the duty of the Revenue officials to conduct an enquiry to identify the heirs, and did not accept the



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

contention of the State that the identification of Class-II legal heirs was difficult and cumbersome. Consequently, a mandamus was issued directing the Tahsildar to issue a legal heirship certificate to Class-II legal heirs.

g. This view has subsequently been followed in several cases.

Illustratively, the following decisions may be noticed:

- i. T.S. Renuka Devi v The Tahsildar, Mambalam [W.P.(MD) No.37214 of 2015 decided on 07.03.2016]
- ii. R. Lokesh Kannan v the District Collector [W.P.(MD) No. 5586 of 2017 decided on 21.06.2017]
- iii. N.R.Raja v the Tahsildar, Madurai District [W.P.(MD) No.15901 of 2018 decided on 03.08.2018]
- iv. P.S.M Buhari v The Tahsildar [2019 SCC OnLine Mad 19038]

It must, however, be noticed that all these decisions were prior to Circular No.9 of 2019 dated 24.09.2019 which expressly prohibited the Tahsildars from issuing legal heirship certificates to Class-II legal heirs. The grant of legal heirship certificates to Class-II legal heirs was not expressly covered under the prohibition contained in paragraph 7 of Circular No.11 of 2017 dated 09.08.2017, which preceded Circular No.9 of 2019. Thus, the learned single judges of this Court had proceeded on the



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

footing that there was no express embargo to issue a legal heirship certificate to Class-II legal heir under Circular No.11 of 2017.

- h. However, in **J. Babu v The Tahsildar [W.P.No. 5940 of 2017, decided on 27.07.2020]**, a learned single judge of this Court, dismissed the writ petition and upheld the decision of the Tahsildar directing the adopted son of a deceased Christian lady to approach the civil court. Having held as above, the learned single judge, nevertheless, went on to take note of Circular No.9 of 2019, dated 24.09.2019, and observed as under:

“16. It is unfortunate to state that there is no mention about [Section 15](#) of the Hindu Succession Act in Circular No.9/2019, dated 24.09.2019 and it only proceeds with [Section 8](#) of the said Act. There is also no mention about the other personal laws”

The learned single judge referred to the decision in **N.R Raja** (*supra*), which was decided prior to Circular No.9 of 2019, and held that the difficulty in identifying Class-II legal heirs could not be a ground to refuse grant of legal heirship certificates to Class-II legal heirs. In view of the various anomalies found in Circular No.9 of 2019, the learned single judge directed the authorities to issue a revised circular keeping in mind the various personal laws and Section 15 of the Hindu Succession Act.

- i. In **Lakshmi Jagannathan v The Tahsildar [W.P.No.14998 of 2020 decided on 18.11.2020]**, this Court did not accept the stand



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

of the State that it would be cumbersome to identify Class-II legal heirs of a deceased Hindu. The Court opined as under:

“Though the respondent and other revenue officials cannot give interpretation of the law of Succession, which is the normally the business of the Courts, they should advert to the Class I, Class II and other heirs enlisted in the said Act and basics of personal laws to apply their mind, while dealing with the applications for issuance of Legal Heirship Certificate, which was expected of them, while conferring on them the power to issue the legal heirship certificates.”

- j. Very recently, in **A. Balasubramaniyan v The Additional Chief Secretary and another [W.P (MD) No. 21441 of 2021 (batch) decided on 12.01.2022]**, another learned single judge held that the Tahsildar could issue legal heirship certificates to the heirs of a deceased brother or sister when there are no rival claimants. From a perusal of this judgment, it appears that Circular No.9 of 2019 was not brought to the notice of the learned single judge.
- k. At this juncture, it is also necessary to notice the decision of a Division Bench of this Court in **J. Ravi v The District Collector & others [W.P MD 18477 of 2020 decided on 16.12.2020]**. The matter arose out of a public interest litigation seeking a prayer to take action against the Revenue officials for issuing a legal heirship certificate in violation of the circulars to



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

one group where the deceased had two wives. The Division Bench affirmed the position that in view of the circulars issued by the Commissioner of Revenue Administration, the Tahsildar did not have any power to issue legal heirship certificate when the deceased left behind two wives.

- i. When things stood thus, a batch of cases concerning the power of the Tahsildar to issue legal heirship certificates to Class-II legal heirs came up before our learned brother Mr. Justice M. Dhandapani. The learned judge opined that there existed an apparent conflict between the decision of E. Padmanabhan, J. in **Thirumurthy (supra)**, holding that the Tahsildar had no power to issue legal heirship certificates which conferred no legal right and the later decisions of the single judges, in particular the decision in **Babu (supra)** where this Court had issued a mandamus directing the Tahsildar to issue a Class-II legal heirship certificate, diluting the effect of the circulars issued by the Revenue Department, and **C.Krishnamurthy v The Tahsildar [W.P. No. 21816 of 2021, decided on 21.10.2021]**, wherein, it was held that the ban on issuance of Class-II legal heirship certificates by Tahsildars in view of Circular No.9 of 2019, did not bind the Tahsildar in view of the earlier decisions of this Court.
- m. M. Dhandapani, J. opined that when the circulars had no legal force, it was anomalous to hold that it would be enforceable for the purposes of granting legal heirship certificates to Class-I legal



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

heirs and at the same time, be unenforceable for the purposes of granting certificates to Class-II legal heirs. In the opinion of the learned judge, the decision of the Division Bench in **M. Ravi** (*supra*), was apparently contradictory as it held that the Tahsildar had no power to issue legal heirship certificates beyond the remit of the circular and had also observed that the circulars were also to be followed. Another set of cases have held that the circulars were to be followed, while yet another line of cases have held that the part of the circular which barred the Tahsildar from granting legal heirship certificates to Class-II legal heirs, had no statutory force. Finding the conflicting views irreconcilable, M. Dhandapani, J. has, *vide* an order of reference dated 19.01.2022, referred the questions set out in paragraph 1 (*supra*) for an authoritative pronouncement by a larger Bench.

3 We have heard the learned counsel for the various petitioners in these batches of cases on the questions forming the subject matter of the reference. We have also heard Mr. R. Neelakandan, learned Additional Advocate General assisted by Mr. V. Ravi and Ms. Geetha Thamaraiselvam, Special Government Pleaders. Having regard to the various legal questions that have cropped up for consideration, we requested Mr. Sharath Chandran, Advocate, to assist this Court as *Amicus Curiae*.



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

4 On our request, Dr. Venkatachalam, I.A.S, Commissioner of Social Security Schemes, Government of Tamil Nadu, Mr. Ilangovan, District Revenue Officer, Deputy Commissioner of Schemes and Mrs. Radha Jayalakshmi, Assistant Commissioner of Schemes were also present.

5 Mr. Naresh Vassudhev, learned counsel for the petitioner in W.P. No.27239 of 2021 made the following submissions:

- a. The learned counsel contended that it was incorrect to say that the Revenue Department does not have powers to issue legal heirship certificates. The power was traceable to G.O. Ms. No.2906 dated 04.11.1981 which cannot be overridden by the circulars nor can it narrow the power given under the G.O.
- b. Referring to the decision in **G.J Fernandez v State of Mysore and others [AIR 1967 SC 1753]**, he submitted that flouting these circulars would expose the officer concerned to disciplinary proceedings which would show that these circulars are backed by sanctions.
- c. The learned counsel cited the decision of a learned single judge of this Court in W.P (MD). 22184 of 2021, dated 12.01.2022, wherein a direction was issued to the Tahsildar to grant legal heirship certificates to Class-II legal heirs if there was no contest.

6 Mr. P.V Balasubramaniam, learned counsel for the petitioner in W.P.No.2913 of 2022 contended as under:



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

- a. A legal heirship certificate is only a recognition of a pre-existing right and does not confer any new right. Hence, the issuance of a legal heirship certificate does not involve any adjudication. It merely recognises an existing status.
- b. Unlike Maharashtra, there is no legislation in place to issue legal heirship certificates. Thus, the power, if any, is only traceable to executive orders.
- c. The manner in which the certificate is issued is set out in the Tamil Nadu Revenue Manual. The mechanism contemplated therein would avoid the civil courts being flooded with cases.
- d. In case of Class-II legal heirs of Hindus, they can be issued on the strength of an affidavit and a certificate issued by a practising Advocate that the applicants fall under Class-II legal heirs.

7 The other learned counsel appearing for the petitioners adopted the aforesaid arguments.

8 Mr. Neelakandan, learned Additional Advocate General submitted as under:

- a. A legal heirship certificate is issued only upon completion of inquiry after perusing the report of the Revenue Inspectors.
- b. The problem of identifying Class-II legal heirs is not imaginary but real. Way back in 2003, the then Commissioner of Revenue Administration had pointed out the practical difficulties faced by



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

the officers in the field. It was only on this basis that the Government had issued the 2017 and 2019 circulars limiting the issuance of legal heirship certificates to Class-I legal heirs. There is nothing arbitrary about the circular as it merely aims to limit the issuance of certificates to avoid needless litigation and legal problems.

9 Mr. Sharath Chandran, the learned *Amicus Curiae*, made the following submissions:

- a. The grant of a legal heirship certificate cannot be traced to G.O. Ms.2906, dated 04.11.1981, as the Government Order merely provides for sub-delegation of the powers only insofar as income certificates and community certificates. The power must, therefore, be traced to Serial No.46 of G.O. Ms.No.581 dated 03.04.1987 which deals with the duties of the Tahsildar, and the function of issuing legal heirship certificate is prescribed as one of the many duties therein.
- b. The circulars, *viz.*, No.11 of 2017 and No.9 of 2019 issued by the Government are merely executive instructions which are not law within the meaning of Article 13 of the Constitution of India. Hence, the question of striking them down does not arise.
- c. These circulars, though not binding on the Court and do not impinge on the rights of the citizen, are nevertheless administratively binding on the Tahsildar. The decisions in



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

Satrudhan Sahani v The State of Bihar and others [AIR 1992 Pat 21] and **Sachidanand Pandey and another v State of West Bengal [(1987) 2 SCC 295]** were cited in support of the aforesaid proposition.

- d. The concept of a legal heir is a status granted by law. An executive order or an administrative instruction given to a Tahsildar cannot alter the scope of a status which is conferred by law. The wholesale application of Class-I legal heirs defined in paragraph 3 of Circular No.9 of 2019 to non-Hindus would lead to several absurd and anomalous results.
- e. There is a world of difference between a succession certificate granted by the Court under Part X of the Indian Succession Act, 1925 and a legal heirship certificate issued by a Tahsildar. The two are, at any rate, not synonymous.

10 For the sake of clarity, the questions referred for consideration by our learned brother M. Dhandapani, J. are expatiated as under:

- i. Whether a legal heirship certificate issued by the Tahsildar determines the status of legal heirs under their respective personal laws?
- ii. When Sections 8 and 15 of the Hindu Succession Act speak in clear terms about the persons, who are the legal heirs of a deceased person, and Section 9 to 11 provide the manner in which class-II legal heirs would succeed to the property of a deceased person,



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

inspite of the specific provision under the Act, could the issue be relegated to the Tahsildar for identifying the class-II legal heirs for the purpose of issuing legal heirship certificate?

- iii. In the absence of any challenge to Letter No.1534, dated 28.11.1991 and Circular Instructions No.11/2017, RA 5(3)/80/2017 dated 9.8.2017, which prohibits the Tahsildar from issuing Class-II Legal heirship certificates in case of certain disputed circumstances, which has formed the basis for rejection of the application for Class-II Legal heirship certificate, would it be right on the part of this Court to give an affirmative direction under Article 226 of the Constitution of India to issue Class-II Legal heirship certificate, sidelining the mandated procedure laid down under the Succession Act for obtaining such a certificate?
- iv. Can the High Court issue a writ of mandamus under Article 226 of the Constitution of India to direct the Tahsildar to issue a legal heirship certificate?
- v. Can the High Court, sitting under Article 226 of the Constitution, create a different mechanism from the one already built in under the Succession Act for obtaining succession certificate, for the mere reason that the existing mechanism provided under the Succession Act is cumbersome and time-consuming and involves precious judicial time?

Re: Question No.10 (i)

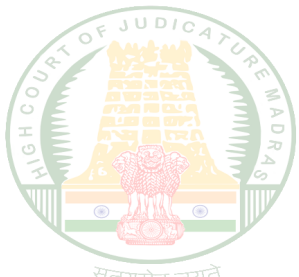


WEB COPY

11 The heart of the controversy in this reference is the power of the Tahsildar to issue legal heirship certificates to Class-II legal heirs. The expression “*heir*” is defined in the Black’s Law Dictionary (Ninth Edition, West Publishing) to mean “*a person who, under the laws of intestacy, is entitled to receive an intestate descendant’s property - Also termed a legal heir; heir at law; lawful heir.*” This definition approximates to the definition of an “*heir*” contained in Section 3(f) of the Hindu Succession Act, 1956 which is as under:

““heir” means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;”

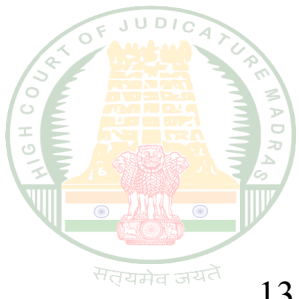
The aforesaid definition limits the definition of an heir to persons who succeed to the property of a person who has died intestate. This is, perhaps, on account of the fact that a person who succeeds to the property under a Will is more commonly referred to as a “legatee” in law. In **N.Krishnammal v R.Ekambaram and others [(1979) 3 SCC 273]**, the Supreme Court followed its earlier decision in **Angurbala Mullick v Debabrata Mullick [AIR 1951 SC 293]** and concluded that the word “*heir*” must mean all persons who are entitled to the property of another under the law of inheritance. It would,



W.P.Nos.25247 of 2021, etc. batch

therefore, be clear that an “heir” is a status conferred on a person by law, viz., the personal law of the parties.

12 As far as Hindus are concerned, there cannot be any contestation that intestate succession to the properties of a deceased male Hindu is governed by Sections 8 and 9 of the Hindu Succession Act, 1956. Similarly, the inheritance or intestate succession of a deceased female Hindu is governed by Section 15 of the said Act. The property of a deceased Christian dying intestate is governed by the provisions contained in Chapter II of Part V of the Indian Succession Act. Likewise, the property of a Parsi dying intestate would be governed by Chapter III of Part V of the said Act. So far as the Mohammedans in the State of Tamil Nadu are concerned, Section 2 of the Shariat Act, 1937, as amended by the Madras Shariat (Amendment) Act, 1949, requires that the personal law of the deceased Muslim be applied to determine the succession to his/her properties. We notice that the Shariat Act, 1937, to the extent that it recognizes and enforces Muslim personal law, has been held to be “laws in force” within the meaning of Article 13 (1) of the Constitution by the majority judgment of the Supreme Court in **Shayara Bano v Union of India and others [(2017) 9 SCC 1]**.



WEB COPY

13 At this juncture, we pause to note that the concept of a Class-I and Class-II legal heirs is a feature unique to the rules of intestate succession governing the properties of a deceased Hindu male under the Hindu Succession Act, 1956. Section 8(a) of the Act makes it clear that the property of a male Hindu dying intestate shall devolve, firstly, upon the heirs being the relatives specified in Class-I. Section 8(b) then goes on to state that if there are no Class-I legal heirs, then, the property would devolve on the heirs being the relatives set out in Class-II of the Schedule. The Schedule appended to the Act makes it clear that the concept of Class-I and Class-II legal heir relates to Section 8 of the Act which deals with the general rules of succession to the property of a Hindu male dying intestate. In fact, the companion Section 15 which deals with the general rules for succession for female Hindus does not compartmentalise the heirs of a deceased female Hindu into Class-I and Class -II legal heirs. The upshot of this discussion is that the concept of Class-I and Class-II legal heirs is confined solely to the rules of intestate succession of a deceased male Hindu under Section 8 of the Hindu Succession Act.

14 The next question is the source of power for the Tahsildar to issue a legal heirship certificate. Unlike the State of Odisha or Maharashtra where a

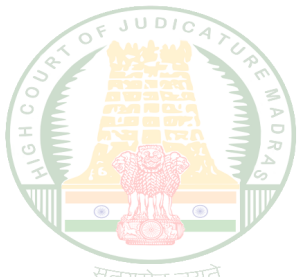


W.P.Nos.25247 of 2021, etc. batch

WEB COPY

legal heirship certificate is issued under the authority of the Odisha Miscellaneous Certificate Rules, 2017 and the Bombay Regulation VIII of 1827 respectively, the issuance of legal heirship certificate by a Tahsildar in the State of Tamil Nadu is not under the authority of any law, rule or regulation. It is commonly believed that the source of power is traceable to G.O. (Ms) No 2906 dated 04.11.1981 issued by the Revenue Department. Like the law of propaganda, this error has been assiduously perpetuated by the State for over four decades and has even found acceptance in the order of a learned single judge of this Court in **J. Babu** (*supra*). We are, however, of the opinion that this is not the case, and that the alleged source of power that is traced to G.O. (Ms) No.2906 dated 04.11.1981 issued by the Revenue Department is evidently a myth.

15 On examining the records, we find that instructions were issued by the erstwhile Board of Revenue (Land Revenue), *vide* Reference No. Y1/4921/79-1, dated 27.04.1979, to tone up the revenue administration in the State. These instructions set out the duties of a Revenue Divisional Officer, Tahsildar, Deputy Tahsildar and Firka Revenue Inspectors. The function of

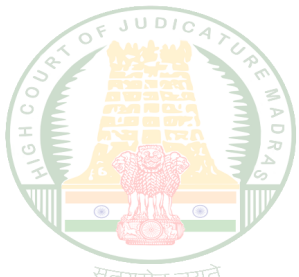


W.P.Nos.25247 of 2021, etc. batch

WEB COPY

issuing heirship certificates is found in Serial No.49 of the duties assigned to a Tahsildar.

16 In April 1979, the Government of Tamil Nadu constituted a One Man Committee (OMC) headed by Mr. S.P. Ambrose, the then Commissioner of Land Revenue, Prohibition and Excise and Settlement of Estates, to examine the various problems in the District Revenue Administration and to make recommendations to raise the level of efficiency. The Committee recommended decentralisation of powers to eliminate multiple scrutiny at different tiers of the revenue administration. More importantly, we gather from Recommendation No.25 in Annexure XII of the Report that there were two types of legal heirship certificates in vogue. The first category was issued by the District Magistrate/Collector under Form IV-C Public Debt Rules, 1946 certifying the legal heirs of the deceased holder of a Government security, and the second category was a legal heirship certificate issued by the Tahsildar. The certificates in the former category had the force of law since the authority to issue the certificate was traceable to Section 9-C of the Public Debt Act, 1944 read with Rule 22 of the Public Debt Rules, 1946. However, as the Act has since been



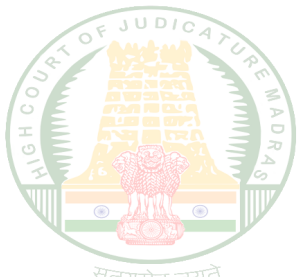
WEB COPY

repealed and replaced by the Government Securities Act, 2006, any further discussion on this aspect would be academic.

17 The OMC, *vide* its report dated 30.01.1980, recommended, *inter alia*, that the function of the Tahsildar to issue nativity and income certificates could be delegated to the Deputy Tahsildar. However, so far as legal heirship certificates were concerned, no changes were recommended and the power continued to remain with the Tahsildar. Acting on the report of the OMC, the Government issued G.O.Ms.No.2906, dated 04.11.1981 delegating the function of issuing income certificates and community certificates to the Deputy Tahsildars. So far as legal heirship certificates were concerned, the following order was passed:

“6. In respect of solvency and legal heirship certificates, they are now being issued by Tahsildar or Independent Deputy Tahsildar and the OMC has recommended no change. The Govt. accept the above recommendation.”

18 We have found it necessary to dwell on the aforesaid aspects to drive home the point that the function of issuing legal heirship certificates is not traceable to the OMC report of Mr. S.P Ambrose dated 30.01.1980 or to G.O. Ms.No.2906 dated 04.11.1981 that followed it. This function was set out



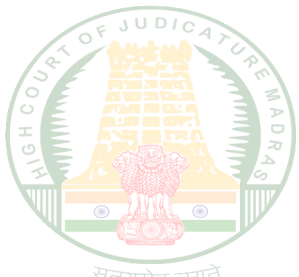
W.P.Nos.25247 of 2021, etc. batch

WEB COPY

in Serial 49 of the instructions of the Board of Revenue (Land Revenue), *vide* Reference No Y1/4921/79-1, dated 27.04.1979.

19 On 03.04.1987, the Government issued G.O. Ms.No.581 to tone up the District Administration. This G.O. refers to the instructions of the Board of Revenue (Land Revenue), *vide* Reference No Y1/4921/79-1, dated 27.04.1979, and states that in view of the subsequent developments, it was necessary to issue a fresh job chart for the various functionaries in the Revenue Department. The function of issuing a legal heirship certificate is found in Serial No.46 of the duties prescribed for the Tahsildar. More importantly, paragraph 3 of G.O. Ms.No.581 empowered the Special Commissioner and Commissioner of Revenue Administration to issue supplemental administrative instructions to the Collectors to effectuate the objects of the G.O.

20 Mr. Naresh Vassudhev, learned counsel appearing for the petitioner in W.P.No.27239 of 2021 contended that administrative instructions, *viz.*, Circular Nos.11 of 2017 and 9 of 2019 issued by the Commissioner of Land Administration consequent to the G.O., cannot whittle down the scope of the power conferred by the G.O. We are unable to agree with this contention. It is not in dispute that the G.O. does not lay down any standards/guidelines as to

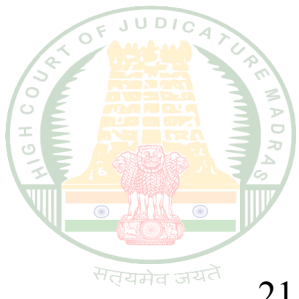


WEB COPY

how a legal heirship certificate is to be issued. In the absence of any discernible criteria, the G.O. would have been exposed to the charge of having vested uncanalised powers with the Tahsildar to issue certificates at his whims and fancies. This would ultimately result in arbitrariness in decision-making. The object of issuing administrative circulars is to avoid this situation by regulating the exercise of power by the Tahsildar, as was pointed out by the Supreme Court as under in **Veerendra Kumar Dubey v Chief of Army Staff and others [(2016) 2 SCC 627]**:

“15. It may have been possible to assail the Circular instructions if the same had taken away something that was granted to the individual by the rule. That is because administrative instructions cannot make inroads into statutory rights of an individual. But if an administrative authority prescribes a certain procedural safeguard to those affected against arbitrary exercise of powers, such safeguards or procedural equity and fairness will not fall foul of the rule or be dubbed ultra vires of the statute.

17. The procedure presented simply regulates the exercise of power which would, but for such regulation and safeguards against arbitrariness, be perilously close to being ultra vires in that the authority competent to discharge shall, but for the safeguards, be vested with uncanalised and absolute power of discharge without any guidelines as to the manner in which such power may be exercised. Any such unregulated and uncanalised power would in turn offend Article 14 of the Constitution.”



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

21. Resultantly, with a view to provide certain objective criteria and thereby ensure consistency in decision making, the following supplemental instruction bearing (Rt) 1534, dated 28.11.1991, was issued by the Special Commissioner and Secretary to Government, Revenue Department to the District Collectors in the State:

" ISSUANCE OF LEGAL HEIRSHIP CERTIFICATE/PROCEDURE

Government of Tamilnadu
Revenue Department
Letter (Rt) No.1534,

Fort St.George
Chennai-9
Dt.28.11.1991.

From

To

ThiruA.Seetharam Das, I.A.S.,
Special Commissioner and
Secretary to Government.

All the District
Collectors

Sub: Certificates/Tahsildars/Issuance of Legal Heirship
Certificate/some guidelines stipulated-reg.

Ref: 1.G.O.(Rt)N.2906,Revenue Dt.4.11.81.

2. Letter of the Accountant General in P.V5.1K 353.
791 748.82/83.957 dated 3.1.83.

3. Letter of the Special Commissioner and Revenue
Administrative Commissioner in Q.55466.85/15
dated 8.3.85.

4. Letter of the Special Commissioner and Revenue
Administrative Commissioner in Na.Ka.32669.89 (Q.2),
dated 20.6.90.

As mentioned in the G.O.1st cited under reference, on the basis of the suggestion given by the Accountant General, for stipulating some



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

guidelines, with regard to the issue of legal heirship certificates by the Tahsildars, it was scrutinized by discussing with the Special Commissioner and the Commissioner of Revenue Administration.

2. The Commissioner of Revenue Administration, besides giving suggestions about the guidelines and procedures with regard to the issue of legal heirship certificates by the Tahsildars, has mentioned a format for issuing the legal heirship certificate. The Government accept the suggestions and the format given by the Special Commissioner and the Commissioner of Revenue Administration and accord the approval for implementing them. They have been enclosed with this letter. I request you to adhere to them without fail.

3. It is known that in the legal heirship Certificates issued by some Tahsildars, the following sentences are written "valid for six months only" and "not valid in any Court of law" as conditions. The legal heirship certificates issued by the Tahsildars cannot be considered as equivalent to the Direct legal heirship Certificates issued by the Courts under the Indian Succession Act, 1925. Further, there is no possibility for imposing conditions. Therefore, I request you not to impose any of the conditions, as mentioned above, while issuing the legal heirship certificate

4. I request, that, based on the abovesaid orders, necessary instructions shall be given to the Officers concerned.

5. I request that the receipt of this letter may kindly be acknowledged, at once.

Yours faithfully

Sd/- K.V.Subramanian

Special Commissioner and Secretary to Government

ANNEXURE



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

GUIDELINES

1. As per the present procedure the Tahsildar has to issue the legal heirship certificate to the direct heirs.

2. The Tahsildar should avoid issuing legal heirship certificate in respect of the following items mentioned below, apart from the direct heirs, and the applicants should be instructed to get the certificates through the Civil Courts.

a. If there are more than one wife/husband for the deceased, and even if they have children, and if it is evident that there is a partition dispute among them.

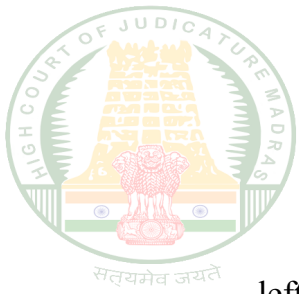
b. When there is a condition to issue heir certificate for the person, who has left the family for seven years by deeming that person to be dead.

c. If a person is residing in other Districts, and does not have the residence within the limits of the taluk and if he is not in possession of a house or property, and does not attend the enquiry to give his statement to the Tahsildar.

d. If the deceased does not have children and brings up other children.

3. The person requesting for the legal heirship certificate for the direct heirs, should annexe the death certificate of the deceased person, affix the stamp and send an application to the Tahsildar concerned. The applications received accordingly shall be sent to the Revenue Inspector concerned for conducting proper enquiry.

4. On receiving the application from the Tahsildar concerned, the Revenue Inspector and the Village Administrative Officer shall go to the residential address of the petitioner concerned and first conduct enquiry with the petitioner and all the members of his family, his relatives, neighbours and local people and obtain their statements. The ration card, its properties belonging to the deceased, the will, wedding invitations and other documents



WEB COPY

left behind by the deceased shall be properly scrutinized and the reports regarding the persons who are the legal heirs of the deceased and their details shall be consolidated and sent to the Tahsildar.

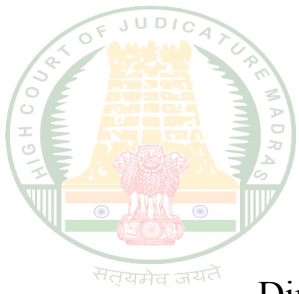
5. As soon as the report of the Revenue Inspector is received, the Tahsildar should scrutinize it properly. After scrutiny, the legal heirs of the deceased person, should be confirmed with certainty. In case of suspicion, the Tahsildar can ask the petitioner concerned or his family members, relatives or the local people belonging to that place, or ask and get some other documents and arrive at a decision.

6. The legal heirship certificate should be issued only after arriving at a decision as to who are the legal heirs of the deceased without giving any room for suspicion."

22 This letter was administratively followed for almost 26 years till it was superseded by Circular No.11 of 2017 issued by the Commissioner of Revenue Administration on 09.08.2017. Paragraph 3 of this circular empowered the Tahsildar to grant legal heirship certificates to a “*direct legal heir*” of the deceased which are enumerated therein. The relevant extracts run thus:

“2) It is proposed to issue the Legal heirship 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.

3) Direct Legal heir



WEB COPY

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 pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased son.”

23 Paragraph 7 of Circular No.11 of 2017 prohibited the issuance of legal heirship certificates on certain specified grounds, which are as under:

“7) General instructions:-

Tahsildars shall not issue legal heirship certificates for the following cases and to inform the applicants to approach the Competent Court for obtaining the legal heirship certificates.

- (i) If more than one wife/husband exist for the deceased
- (ii) When there is a dispute for settlement / partition of proprieties 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.”

24 As we have pointed out above, Class-II legal heirs were not explicitly barred under paragraph 7 (*supra*) with the result that several learned single judges of this Court were entertaining writ petitions and issuing a



WEB COPY

mandamus directing the Tahsildar to grant legal heirship certificates to Class-II heirs.

25 On 24.09.2019, the Commissioner of Revenue Administration issued another circular, viz., Circular No.9 of 2019, containing revised/updated instructions for issuing legal heirship certificates. Paragraph 3 of the circular enumerates a list of “*direct legal heir*” or Class-I legal heir reads as under:

“3. Direct Legal Heir or Class-I Legal Heirs

Son; daughter; widow; mother; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased daughter; daughter of a pre-deceased daughter; widow of a pre-deceased son; son of a pre-deceased son of a pre-deceased son; daughter of a pre-deceased son of a pre-deceased son; widow of a pre-deceased son of a pre-deceased son 1 [son of a predeceased daughter of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased daughter; daughter of a pre-deceased son of a pre-deceased daughter; daughter of a pre-deceased daughter of a pre-deceased son].”

26 We compared this list with the Schedule found in the Hindu Succession Act, 1956, and we find that the Revenue authorities have predictably blundered in resorting to a “*copy-paste*” job in lifting the Class-I legal heirs of a deceased male Hindu from the Schedule of the Hindu Succession Act, into paragraph 3 of the circular and applying them to all applicants, irrespective of the deceased being male or female or belonging to a religion other than a Hindu. In other words, the expression “*direct legal heir*”,

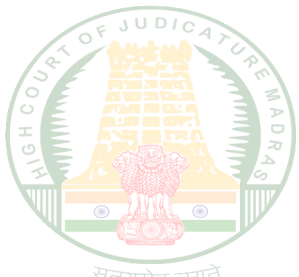


WEB COPY

corresponding to the list of Class-I legal heirs of a male Hindu dying intestate under the Hindu Succession Act, 1956, was made applicable to issue legal heirship certificates across the Board to the heirs of a deceased belonging to other religions as well. The list in paragraph 3 of the circular suffers from complete non-application of mind as even the heirs of a deceased female Hindu who are governed not by Section 8 but by Section 15 of the Hindu Succession Act, 1956, are also treated on par with the heirs of a deceased male Hindu under Section 8.

27 The “copy-paste” in paragraph 3 of the circular is so sloppy that we found a strange expression “1[” before the expression “*son of a predeceased daughter of a pre-deceased daughter*”. At first blush, we assumed that this was a typographical error. However, upon examining the Schedule of Class-I heirs in the Hindu Succession Act, 2005, we find that the expression “1[” refers to a footnote in the Schedule of the Act which was obviously forgotten during the “copy-paste” exercise.

28 We enquired from the learned Additional Advocate General as to whether the Revenue authorities were actually applying paragraph 3 of the circular irrespective of the religion to which the applicant belongs. In response,



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

Mr.Kumar Jayant, Principal Secretary to Government, Revenue and Disaster Management Department, has filed an affidavit dated 22.04.2022, wherein, it is stated as under:

“In the circumstances stated above, it is submitted that, legal heirship certificate is issued through online for direct legal heirs or Class I legal heirs by the Tahsildars of Revenue Department as per the existing Government Orders and guidelines and it is issued to persons irrespective of any religion. Copies of legal heirship certificates issued to Hindu, Muslim and Christian etc applicants are enclosed herewith.”

We find that in paragraph 8 of Circular No.9 of 2019 issued by the very same authority, it is stated thus:

“In letter no D. Dis RA V(3)/74529/2001, dated 28.02.2003, the then Special Commissioner/Commissioner of Revenue Administration has recommended to the Government stating that of late claims under the issue of legal heirship certificates are increasing and complexities are also very high. More often than not, people tend to suppress the truth, which cannot be detected even under discreet enquiry. Issue of legal heirship to indirect cases may lead to legal problems. Therefore, legal heirship certificate may be issued by Tahsildar only in respect of Class I or Direct legal heir mentioned in the Schedule under Section 8 of Hindu Succession Act.

Tahsildars shall not issue legal heirship certificates to the following cases :

- i. Class II legal heirs or indirect legal heirs mentioned in the Schedule under Section 8 of Hindu Succession Act 1956
- ii. Siblings of the deceased cannot claim legal heirship certificate from the Tahsildars as they come under Class II legal heir or indirect legal heir. However, they can submit application for issuance of Legal heirship



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

- certificate in favour of their father/mother and in view of age/literary constraints, if any
- iii. When the Deceased having more than one wife/husband
 - iv. When there is a dispute for settlement/partition for properties of the deceased
 - v. In the case of person treated as dead, (person who is missing for a period of 7 years or staying away from the family)
 - vi. No certificate shall be issued under Indian Succession Act, 1925”

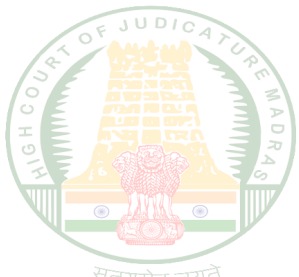
We are baffled as to how Section 8 of the Hindu Succession Act could be applied to a Muslim or a Christian for the grant of legal heirship certificates. From one of the certificates placed before us, we find that a legal heirship certificate has been issued in respect of a deceased Christian male recognizing his wife, two children and his mother as his legal heirs. This is obviously a fallacy since it applies Class-I legal heirs applicable to a deceased Hindu male under Section 8 of the Hindu Succession Act, 1956, to a deceased Christian male governed under the Indian Succession Act, 1925. The mother who is a Class-I legal heir of a deceased Hindu male does not enjoy that status under the Indian Succession Act. Under Sections 33 and 37 of the Indian Succession Act, the heirs of the aforesaid deceased Christian would be his widow and children. The father and mother would be the heirs under Sections 42-48 of that Act only if there are no lineal descendants like the children of the deceased which was not the case here.



WEB COPY

29 Whether the revenue authorities have unwittingly blundered or were carrying out a novel experiment in social engineering is a moot question. Nevertheless, it is not open to the revenue authorities to distort, by a sidewind, the status of an heir which is conferred on them by their respective personal laws. At the end of the day, Circular No.9 of 2019 is merely an administrative instruction which cannot run counter to the statutory personal law of the parties. We have no hesitation in concluding that the application of Paragraph 3 of the circular to Non-Hindus is wholly misconceived.

30 Reverting to the issue of Class-II legal heirs, paragraph 7 of Circular No.9 of 2019 is again bodily lifted from list of Class-II legal heirs in the Schedule to the Hindu Succession Act, 1956. Paragraph 8 of the circular, extracted *supra*, contains a general instruction that Tahsildars shall not issue legal heirship certificates to Class-II legal heirs and other classes enumerated in paragraph (ii) to (vi) therein as it would lead to “*legal problems*”. The Revenue Department has taken a stand that paragraph 8 of the Circular applies to all parties irrespective of religions. In fact, in paragraph 8(ii), they categorically say that siblings cannot claim a legal heirship certificate as they come under

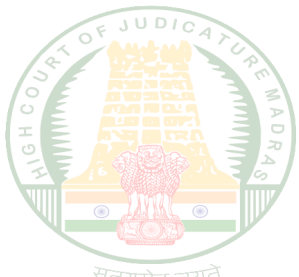


WEB COPY

Class-II legal heirs. If this is applied literally to determine the legal heir of a Muslim, it would lead to startling results.

31 To illustrate, take the case of a deceased male Sunni Muslim who leaves behind a daughter, a widow and two brothers. Under the Muslim personal law, the brothers would jointly inherit $\frac{5}{24}$ share, the daughter would inherit $\frac{2}{3}$ share and the wife would take $\frac{1}{8}$ share. The point here is that under the Muslim personal law, the brother is a direct sharer/heir, whereas, under paragraph 8 of the Circular, he is relegated to a “Class-II legal heir”, which is a concept unknown to Muslim personal law. To add to this confusion, the brother stands excluded from applying for a legal heirship certificate by virtue of paragraph 8 of the circular which is obviously an absurdity brought upon by applying the provisions of the Hindu Succession Act to Muslims.

32 Yet another striking anomaly is the exclusion of a father on the footing that he is a Class-II legal heir. As noticed, *supra*, the reason adduced in paragraph 8 of the circular to exclude Class-II legal heirs is that the revenue officials find it hard to ascertain the precise relationship even on a discreet enquiry. However, we are rather puzzled to find that the Circular makes persons like the “*son of a pre-deceased daughter of a pre-deceased daughter*” or a

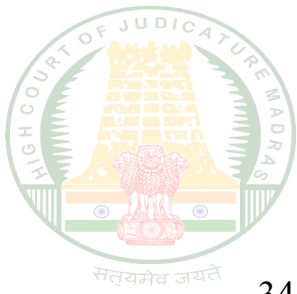


W.P.Nos.25247 of 2021, etc. batch

सत्यमेव जयते
WEB COPY

“daughter of a predeceased son of a predeceased daughter” or a *“daughter of a predeceased daughter of a predeceased son”* eligible to apply for a legal heirship certificate but a father or a brother or a sister are ineligible as they are Class-II heirs and they are not capable of easy identification by the revenue officials. Surely, it takes nothing more than modest common sense and practical experience to understand that it is easier to ascertain the relationship of an applicant like a father rather than an applicant who is the *“son of a predeceased daughter of a pre-deceased daughter”*. We are, therefore, of the considered opinion that the so called rationale for exclusion of persons like a father of the deceased is wholly illogical.

33 To compound the confusion we find that in paragraph 5(3) of the circular the parents (including the father) can apply for issuance of a legal heirship certificate in cases where the deceased was unmarried. Paragraph 8(i), on the other hand, declares that the Tahsildar shall not issue legal heir certificates to Class-II legal heirs (which includes a father). There is, therefore, an obvious conflict between paragraph 5(3) and paragraph 8(i) of the 2019 circular.



WEB COPY

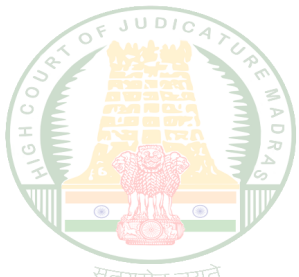
34 From the records, we find a communication bearing D.Dis R.A V(3)/74529/2001, dated 28.02.2003, from the then Commissioner of Land Administration addressed to the Secretary to Government (Revenue Department), wherein, it is stated as under :

“3.In this connection I wish to state that the practice hitherto followed by the Tahsildars of Taluk is to issue legal heirship certificate only to the direct legal heirs *i.e.*, wife, son, daughter, mother and father of the deceased and the claims of others are not entertained. The Government themselves issued instructions that the Tahsildars should avoid issue of certificates in other than direct cases. It has also been mentioned that the certificates issued to the direct legal heirs by the Tahsildars cannot be equated with that of the certificate issued by the courts.

Of late, the claims under the issue of legal heirship certificates are increasing and the complexities are also very high. More often than not, people tend to suppress the truth, which cannot be detected even under discrete enquiry. Issue of legal heirship to indirect cases may lead to legal problems. Therefore I am of the view that legal heirship certificate may be issued by the Tahsildars only in respect of Class I of schedule under section 8 of Hindu Succession Act and "Father" shown in Class II may perhaps be included.”

(emphasis supplied)

35 We endorse the aforesaid view of the Commissioner of Revenue Administration that a father must be eligible to apply for a legal heirship certificate in respect of his deceased child. Similarly, the State will also

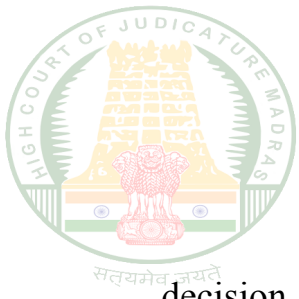


WEB COPY

consider including a blood brother/sister as eligible applicants for unmarried deceased for issuance of a legal heirship certificate.

36 Having examined the relevant circulars and G.Os. placed before us, the position that emerges is that the power of the Tahsildar to issue legal heirship certificates is not traceable to issue G.O.Ms 2906 Revenue Department dated 04.11.1981, as has been erroneously assumed, but to the duties prescribed in the instructions of the erstwhile Board of Revenue (Land Revenue), *vide* Reference No.Y1/4921/79-1, dated 27.04.1979. These instructions were replaced by G.O.Ms.No.581 Revenue Department dated 03.04.1987 which is an executive order issued in the name of the Governor. Indisputably, unlike the instructions of the Board of Revenue, the Government Order has been issued in exercise of the executive power of the State under Articles 162 and 166(3) of the Constitution of India which has the force of law in the absence of any legislation holding the field.

37 So far as the circulars are concerned, they are merely executive instructions which have been issued by the Commissioner of Revenue Administration. It is well settled that executive instructions do not have the force of law. The position is settled beyond any pale of controversy by a



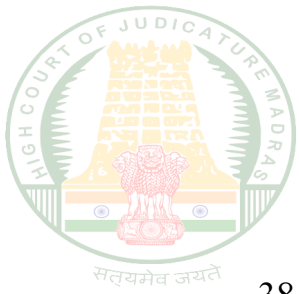
W.P.Nos.25247 of 2021, etc. batch

WEB COPY

decision of a Constitution Bench of the Supreme Court in **State of Assam & another v Ajit Kumar Sarma & others [(1965) 1 SCR 890]**, wherein, it was

held as under:

“We may in this connection refer to Raman v State of Madras [(1959) Supp 2 SCR 227] where this Court had to consider certain orders and directions issued under Section 43-A of the Motor Vehicles (Madras Amendment) Act, 1948. The question arose whether the orders issued under Section 43-A had the status of law or not. This Court held that such orders did not have the status of law regulating the rights of parties and must partake of the character of administrative orders. It was further held that there could be no right arising out of mere executive instructions, much less a vested right, and if such instructions were changed pending any appeal, there would be no change in the law pending the appeal so as to affect any vested right of a party. That decision in our opinion governs the present case also, for it has been found by the High Court, and it is not disputed before us, that the Rules are mere administrative instructions and have not the force of law as statutory rules. They therefore confer no right on the teachers of private colleges which would entitle them to maintain a writ petition under Article 226 for the enforcement or non-enforcement of any provision of the Rules. The Rules being mere administrative instructions are matters between private colleges and the Government in the matter of grant-in-aid to such colleges, and no teacher of a college has any right under the Rules to ask either for their enforcement or for their non-enforcement. We are therefore of opinion that the High Court was in error when it granted a writ against the State through the Director, by which the Director was asked not to give effect to its letter dated March 20, 1962, against the Governing Body of the College.”
(emphasis supplied)



WEB COPY

38 In **T.Cajee v U. Jormanik Siem & another** [AIR 1961 SC 276],

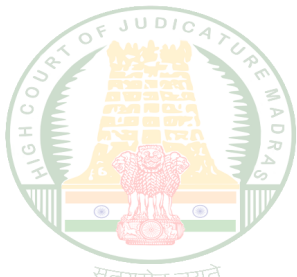
another Constitution Bench held as under:

“where executive power impinges upon the rights of citizens it will have to be backed by an appropriate law; but where executive power is concerned only with the personnel of the administration it is not necessary — even though it may be desirable — that there must be laws, rules or regulations governing the appointment of those who would carry on the administration under the control of the District Council.”

The Court concluded that the power to issue administrative directions flowed from the general power of administration vested in the authority concerned. The administrative circulars do not flow from any rule or regulation which is another essential requirement to qualify as a law. In **Sukhdev Singh & others v Bhagatram Sardar Singh Raghuvanshi & another** [AIR 1975 SC 1331], Ray, C.J. made the following observations:

“The characteristic of law is the manner and procedure adopted in many forms of subordinate legislation. The authority making rules and regulation must specify the source of the rule and regulation making authority. To illustrate, rules are always framed in exercise of the specific power conferred by the statute to make rules. Similarly, regulations are framed in exercise of specific power conferred by the statute to make regulations. The essence of law is that it is made by the law-makers in exercise of specific authority.” (emphasis supplied)

39 There is yet another reason why an executive instruction does not affect the rights of a citizen. One of the essential elements of a law is that it



W.P.Nos.25247 of 2021, etc. batch

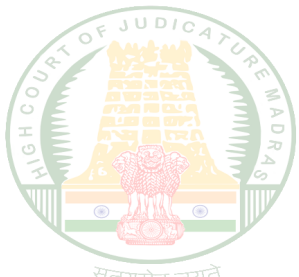
सत्यमेव जयते
WEB COPY

must be notified or made public in order to bind the citizen. In **Gulf Goans Hotels Co. Ltd. & another v Union of India and others [(2014) 10 SCC 673]**, the Supreme Court pointed out as under :

“22It is also essential that what is claimed to be a law must be notified or made public in order to bind the citizen. InHarlavState of Rajasthan[AIR 1951 SC 467 : 1952 Cri LJ 54] while dealing with the vires of the Jaipur Opium Act, which was enacted by a resolution passed by the Council of Ministers, though never published in the Gazette, this Court had observed: (AIR p. 468, para 8)

“8. ... Natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is, or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a resolution without anything more, is abhorrent to civilised man.”

40 The letter dated 28.11.1991, Circular No.11 of 2017 and Circular No.9 of 2019, respectively are all addressed to the District Collectors and other officials of the Revenue Department and are not published in the official gazette or notified in any other manner for the benefit of the citizen. They are,

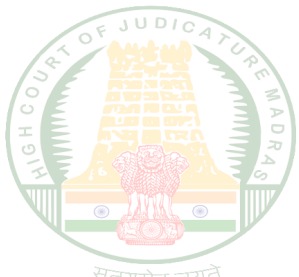


W.P.Nos.25247 of 2021, etc. batch

सत्यमेव जयते
WEB COPY

therefore, merely inter-departmental circulars which do not satisfy the requirement of publication which is an essential quality of a law. Consequently, the letter dated 28.11.1991 and Circular No.11 of 2017 and Circular No.9 of 2019 do not qualify as law, and neither confer nor affect the legal right(s) of any citizen.

41 We have found it necessary to undertake the aforesaid exercise, which is unavoidably a little too long, on account of the fact that the authorities themselves have been cluelessly issuing legal heirship certificates by applying the provisions applicable to a deceased Hindu male under the Hindu Succession Act to heirs of a deceased female Hindu as well the heirs belonging to other religions. The status of an individual as an heir-at-law cannot be altered by an executive fiat, much less by an administrative circular, which has no force of law. The concept of heirship is a field occupied by legislation, viz., the Hindu Succession Act, 1956, the Indian Succession Act, 1925 and the Muslim Personal Law (Shariat) Application Act, 1937. It is, therefore, not open to the Revenue Department to contrive its own list of heirs for persons from all religions and that too, on the strength of mere executive instructions. As the



सत्यमेव जयते
WEB COPY

circular has no force of law, we are fortunately spared the task of pronouncing on its validity.

42 We may point out that the procedure for issuing a legal heirship certificate, as set out in the Revenue Manual, reveals that upon the receipt of an online application, the Tahsildar deposes the Revenue Inspector who visits the village/locality and gathers inputs about the deceased and his relatives. The role of the Revenue Inspector is essentially a fact-finding one. On the basis of the information gathered by the Revenue Inspector, a report is prepared and forwarded to the Tahsildar who then conducts an inquiry and acts upon the report and either issues or refuses to issue a legal heirship certificate. Thus, the entire procedure is merely administrative in character and does not bear, even remotely, the character of an adjudication. It is for this reason that the Courts have held that these certificates do not affect the legal rights of any party. However, the use of the prefix “legal heir” has given room to an unfounded assumption that these certificates are the final word on the status of legal heirs of a deceased person.

43 At this juncture, it is necessary to advert to the following submissions made at the bar:



WEB COPY



W.P.Nos.25247 of 2021, etc. batch

- a. G.O.581 is “law” within the meaning of Article 13 of the Constitution of India;
- b. The G.O. casts a duty on the Tahsildar to issue a legal heirship certificate;
- c. However, the G.O. does not define the expression “legal heir”;
- d. Circular Nos.11 of 17 and 9 of 19 are administrative circulars and they cannot whittle down the scope of G.O.581 and put fetters on the power of the Tahsildar to issue legal heirship certificates;
- e. Hence, the Tahsildar is bound to issue a legal heirship certificate to a Class-II heir also.

44 Though, at first blush, this argument did appear attractive, we find a serious flaw in it, because this argument is predicated essentially on the fallacy that Class-II heirs mentioned in the Schedule to the Hindu Succession Act 1956 apply irrespective of the religion to which the applicant belongs. As we have laboured to point out, *supra*, the concept of heirship is determined through the various personal laws. The logical consequence is that the Tahsildar and the Revenue Inspector cannot be expected to go on a wild goose chase hunting for the heirs of the deceased armed with the table of sharers from Mulla on Mohammedan Law or a manual prescribing the mode of distribution contemplated under Parts II and III of Chapter V of the Indian Succession Act, 1925. We cannot expand the functions of the Tahsildar from those of a purely



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

administrative to a quasi-judicial character, as that would lead to total chaos and proliferate litigation.

45 We are, therefore, of the opinion that the prefix “legal heir” used in the certificates issued by the Tahsildar is clearly a misnomer. These are merely relationship certificates reflecting the opinion of the Tahsildar on the relationship of the applicant and the persons named therein with the deceased, and nothing more. They cannot alter the status of a legal heir which is conferred on an individual under his/her personal law. Consequently, we answer the first question that holding the “legal heir” certificate issued by the Tahsildar does not determine the status of any party as an heir of the deceased. This status is conferred on an individual under his/her personal law, and cannot be altered by mere executive instructions such as a circular.

Re: Question No.10 (ii &iii)

46 We notice that some learned single judges of this Court have proceeded on the footing that as a Circular is not law, the same would have no legal effect and would not bind the Tahsildar, with the result that there was no bar for the Court to issue a mandamus to direct the Tahsildar to issue a Class-II



WEB COPY

legal heirship certificate. We are afraid that these line of cases proceeded on an over-simplification which cannot be sustained.

47 In holding that a circular has “no legal force”, it is commonly assumed that it is devoid of any binding effect for all intents and purposes. But, there are no absolute propositions in law as in life. The concept of invalidity is relative, and is dependent upon the context and the person to whom the circular is sought to be made applicable. While it is true that an administrative instruction is not a law and does not bind a citizen or for that matter the Court, the same logic cannot apply to the authorities to whom the direction is issued. Very different considerations apply in such a case as was pointed out by the Constitution Bench in **G.J. Fernandez** (*supra*), wherein it was held that non-observance of the instructions may expose the public servant concerned to disciplinary proceedings. The Court observed as under:

“If these are mere administrative instructions it may be open to Government to take disciplinary action against its servants who do not follow these instructions but non-observance of such administrative instructions does not in our opinion confer any right on any member of the public like a tenderer to ask for a writ against Government by a petition under Article 226.”

This may, perhaps, explain why the Tahsildars, fearing disciplinary action, were periodically rejecting applications by Class-II legal heirs following the



WEB COPY

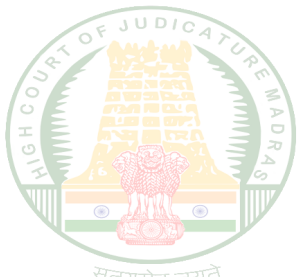
instructions contained in Circular No.9 of 2019, prompting the Class-II legal heirs to routinely approach this Court for a mandamus under Article 226 of the Constitution of India.

48 We also notice the following passage from M.P. Jain and S.N.Jain on Administrative Law (9th Edition, Lexis Nexis Butterworths), where the legal position is set out as under:

“It also needs to be pointed out that while a direction may not be binding in a formal sense, it does not follow that an administrator may disregard it with impunity. The sanction underlying directions is administrative discipline. Administrative authorities are expected to follow the directions issued by their superiors, and breach thereof by subordinate officers may lead to disciplinary or other appropriate action against them. The point is that even when breach of a direction by an officer may not give rise to a court case, it may still raise a question between him and his superiors. An administrative remedy may be available to a person interested in the enforcement of a direction, e.g., he may go to a higher authority in the administrative hierarchy and plead for enforcement of the direction in question in his favour already issued by the concerned department. The moral is that in most cases, the remedy available to a person for breach of a direction favourable to him may be intra-department and administrative in nature rather than through a court.”

(emphasis is ours)

49 In **Satrudhan Sahani** (*supra*), a Full Bench of five learned judges of the Patna High Court held that executive instructions must be followed and obeyed, as the very object of issuing such instructions, is to lend objectivity and

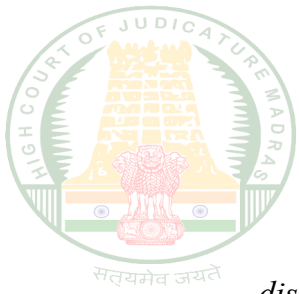


WEB COPY

avoid arbitrariness and extraneous considerations in decision-making. We are in complete agreement with the aforesaid statement of the law.

50 The conclusion is that Circulars, though not binding on the Court or the citizen, is nevertheless binding on the Tahsildar. In **Chrome Leather Company Limited v The Collector, Kancheepuram District & others [2008 1 LW 976]**, a learned single judge of this Court quashed a legal heirship certificate issued in violation of the guidelines issued in the letter dated 28.11.1991. This Court held that where the Tahsildar acts arbitrarily by flouting the guidelines, his decision would be quashed as one without jurisdiction. In doing so, the Court did not enforce the terms of the Circular but merely annulled the decision on the touchstone of Article 14 as the decision-making process was found to be flawed and vitiated by extraneous considerations. In this context, we may also profitably quote the following passage from **Surya Kant Kadam v State of Karnataka & others [(2002) 9 SCC 445]** which runs thus:

“It is true that the appointment on compassionate ground in the State of Karnataka is not governed by any statutory rules but by a set of administrative instructions and as such is not enforceable in a court of law. But the grounds on which the appellant makes out the case for consideration of his case, is the violation of Article 14 and



WEB COPY

discriminatory treatment meted out to the appellant. It is undisputed that the date on which the appellant was given a compassionate appointment as Second Division Assistant/Clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that Respondents 3 and 4 were given appointment initially as Second Division Assistant/Clerk but later than the appellant. When the State, therefore, thought it fit to change the post of Respondents 3 and 4 and appointed them to the post of Sub-Inspector of Excise, unless there is any justifiable reason existing, there is no reason as to why the appellant should be treated with hostile discrimination. In the aforesaid circumstances, we set aside the impugned order of the Tribunal rejecting the prayer of the appellant for being considered for the post of Sub-Inspector of Excise and we direct that the State Government may consider the case of appointment of the appellant as Sub-Inspector of Excise.”

51 We are afraid that the judgments of learned single judges, which proceed to override the practical difficulties faced by the Revenue authorities, ignore the fundamental principle that the Court lacks judicially manageable standards to enter into this area, which is purely within the remit of the executive.

52 Consequently, we must conclude that a writ of mandamus under Article 226 of the Constitution would not lie to compel the Tahsildar to flout administrative discipline by violating the terms of administrative circulars which bind their discretion. However, an exception to the aforesaid principle is



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

where the circular, ex-facie, suffers from the vice of arbitrariness or perversity or runs counter to any provision of law. The Supreme Court has held that where the matter concerns an instrumentality of the State the mandate of non-arbitrariness under Article 14 would apply to statutory regulations as well as to administrative instructions. Consequently, where an administrative circular is hit by any of the grounds, *supra*, it would be open to the Court to ignore the circular and grant such relief(s) as may be permissible in law. (See ***Reserve Bank of India v S. Jayarajan***, 1995 Supp (4) SCC 584)

53 As we have pointed out, *supra* in paragraphs 25-34, Circular 9 of 2019, which is presently in vogue, is riddled with serious legal misconceptions. If the discretion of the Tahsildar to issue legal heir certificates is to be governed by Circular 9 of 2019, in the teeth of the fallacies pointed out by us, we are afraid that such decisions would suffer from the vice of arbitrariness as the decision making process would be founded on extraneous and irrelevant considerations. We are, therefore, constrained to issue consequential directions, *infra*, directing the Government of Tamil Nadu to issue a fresh Government order without the anomalies pointed out above.

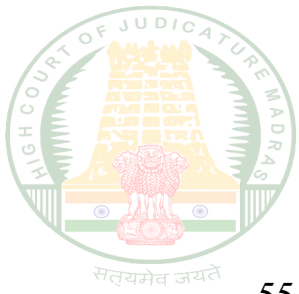


W.P.Nos.25247 of 2021, etc. batch

WEB COPY

Re: Question No.10 (iv)

54 At paragraph 18 of the order of reference, the learned single judge has proceeded on the footing that in the light of the decision in **E.Thirumurthy** (*supra*), the Tahsildar had no power to issue a legal heirship certificate, with the result that it would preclude the Tahsildar or the revenue authority from issuing a certificate to persons enumerated in paragraph 3 of Circular No.9 of 2019 as well. We are unable to persuade ourselves to agree with this conclusion. Having perused the decision in **E.Thirumurthy** (*supra*), we find that neither G.O. Ms. No.581 Revenue Department dated 03.04.1987 nor the letter bearing (Rt) 1534, dated 28.11.1991, of the Special Commissioner and Secretary to Government, Revenue Department was brought to the notice of the learned single judge. As pointed out, *supra*, the duty cast on the Tahsildar to issue a legal heirship certificate flows from Serial No.46 of the duties prescribed for a Tahsildar in the Annexure to G.O. Ms.No.581 Revenue Department dated 03.04.1987. This Government Order has been issued in the name of the Governor in exercise of the executive power of the State under Articles 162 and 166 of the Constitution of India.



WEB COPY

55 In **Govt. of A.P. v P. Laxmi Devi**, [(2008) 4 SCC 720], the

Supreme Court pointed out as under:

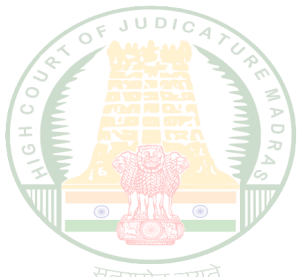
“33. According to Kelsen, in every country there is a hierarchy of legal norms, headed by what he calls as the “grundnorm” (the basic norm). If a legal norm in a higher layer of this hierarchy conflicts with a legal norm in a lower layer the former will prevail (see Kelsen's The General Theory of Law and State).

34. In India the grundnorm is the Indian Constitution, and the hierarchy is as follows:

- (i) The Constitution of India;*
- (ii) Statutory law, which may be either law made by Parliament or by the State Legislature;*
- (iii) Delegated legislation, which may be in the form of rules made under the statute, regulations made under the statute, etc.;*
- (iv) Purely executive orders not made under any statute.*

35. If a law (norm) in a higher layer in the above hierarchy clashes with a law in a lower layer, the former will prevail. Hence a constitutional provision will prevail over all other laws, whether in a statute or in delegated legislation or in an executive order.”

56 It is a well settled law that where there is no legislation, primary or delegated, holding the field, the State is competent to issue executive orders in respect of matters falling within their competence under Lists II and III of the 7th Schedule to the Constitution (See **Rai Sahib Ram JawayaKapur v State of Punjab [AIR 1955 SC 549]**).G.O.Ms.No. 581, dated 03.04.1987 issued in the



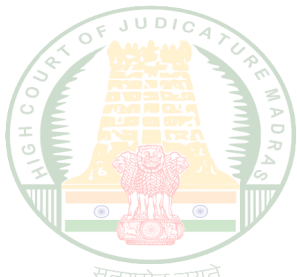
W.P.Nos.25247 of 2021, etc. batch

WEB COPY

name of the Governor of Tamil Nadu is an executive order which falls within the umbrella of the expression “law” under category (iv) of paragraph 34 of the classification set out in **Laxmi Devi** (*supra*).

57 Thus, in the absence of any conflict with any statutory or delegated legislation holding the field, G.O. Ms.No. 581, dated 03.04.1987 which casts a duty on the Tahsildar to issue a legal heirship certificate is undoubtedly a law made in exercise of executive power. In that view of the matter, we are unable to accede to the overbroad proposition in **E.Thirumurthy** (*supra*) that the function of the Tahsildar to issue a legal heirship certificate has no legal sanction. However, as we have already held, *supra*, these certificates cannot alter the status of any legal heir which is a status conferred by a higher law, *i.e.*, personal law of the parties under various statutes.

58 There may be cases where the Tahsildar keeps the application pending and does not decide one way or the other. We are of the opinion that the applicants cannot be left remediless. The Tahsildar is, after all, an instrumentality of the State with the result that he must exercise his functions free from the vice of arbitrariness. In **Oriental Bank of Commerce v Sunder Lal Jain & another** [(2008) 2 SCC 280], the Supreme Court has quoted with



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

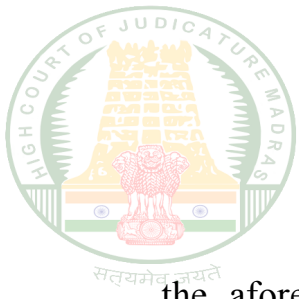
approval the following passage from *The Law of Extraordinary Legal*

Remedies by F.G. Ferris and F.G. Ferris, Jr.:

“Note 192.—Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.” (emphasis supplied)

59 In **J.R.Raghupathy & others v State of A.P.& others [(1988) 4 SCC 364]**, the Supreme Court pointed out that judicial review over the acts of the executive fell broadly into two categories *i.e.*, (a) failure to exercise discretion and (b) excess or abuse of discretion.

60 G.O.Ms.No. 581 Revenue Department dated 03.04.1987 prescribes a maximum time limit of 2 months for the disposal of miscellaneous petitions. We have already held that this Government Order is an executive order under Article 162 having the force of law in the absence of any statute holding the field. Consequently, when the Tahsildar does not decide the application within

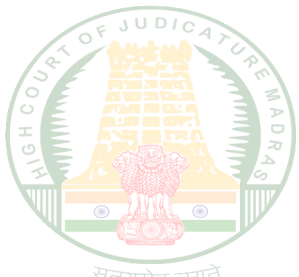


W.P.Nos.25247 of 2021, etc. batch

WEB COPY

the aforesaid period, a mandamus can be issued limited to directing the Tahsildar to dispose the application. Even so, we must hasten to sound the proverbial warning that judicial review is directed against the decision-making process and not against the decision itself. It is no part of the Court's duty to exercise the power of the authorities itself by directing the Tahsildar to issue a legal heirship certificate. The power of the High Court is confined to directing the consideration of the application in accordance with the relevant guidelines and nothing more. (See **State of Haryana v Naresh Kumar Bali [(1994) 4 SCC 448]**).

61 We also notice that the Circular 9 of 2019 provides for administrative remedies by way of an appeal to the Revenue Divisional Officer under paragraph 9 with a further remedy of revision under paragraph 10 to the District Collector in cases of disputes arising due to the issuance of a legal heirship certificate by the Tahsildar. Providing administrative remedies by way of appeal and revision is a facet of good governance as that would undoubtedly relieve the burden of the Courts, by providing a corrective mechanism within the Revenue administration. However, we are of the considered view that a right of appeal and a remedy of revision cannot be created under a circular



W.P.Nos.25247 of 2021, etc. batch

which, as discussed, *supra*, is merely an inter-departmental communication.

WEB COPY

G.O. Ms 581 Revenue Department dated 03.04.1987 also sets out the function of the Tahsildar to issue a heirship certificate only, and does not empower the Revenue Divisional Officer and the Collector to exercise any appellate/revisional jurisdiction.

62 Jurisprudentially, a right of appeal or a remedy of revision can be created only under, what H.L.A Hart terms as, “*a power conferring rule*” (See The Concept of Law, Oxford, page 28). A circular, which has no force of law, cannot create a right of appeal or a remedy of revision. Therefore, while we appreciate the creation of administrative remedies of appeal and revision in Circular No.9 of 2019, the means by which they are created must necessarily pass muster in law. After all, the ends must also be justified by the means. We, therefore, direct the Government to consider issuing a fresh Government Order creating the administrative remedies presently set out in paragraphs 9 and 10 of Circular No.9 of 2019.

Re: Question No.10(v)

63 Question No.8(v) of the order of reference draws a parallel between a succession certificate under the Indian Succession Act, 1925 and a

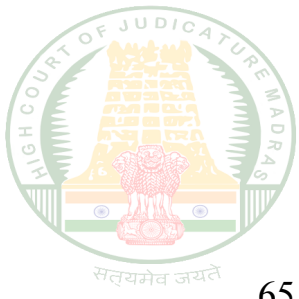


W.P.Nos.25247 of 2021, etc. batch

WEB COPY

legal heirship certificate issued by a Tahsildar. We are of the opinion that a succession certificate is issued under Part X of the Indian Succession Act, 1925, to a legal heir in respect of “*a debt or security*” of the deceased. A succession certificate is not akin to a legal heirship certificate issued by a Tahsildar since the latter does not relate to any debt or security of the deceased. Question No 8(v) is answered accordingly.

64 Before concluding, we reiterate that the existing provisions of Circular 9 of 2019 suffer from a spate of misconceptions that eventually results in a series of illogical and anomalous consequences flowing from use of the expressions “*Class-I and Class-II heirs*” as pointed out *supra*, in paragraphs 24 to 34. We are not oblivious of the fact that the requirement of a certificate of this nature is a *sine qua non* for processing applications in various Government departments. It is necessary in the interests of good governance and fair administration that the State does not drive its citizens, many of whom belong to the marginalised groups, to the Civil Court for this purpose. The legal heirship certificate of the Tahsildar is a creation of the executive. The executive must, therefore, set its house in order instead of needlessly driving its citizens to the Court.



65
WEB COPY

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 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



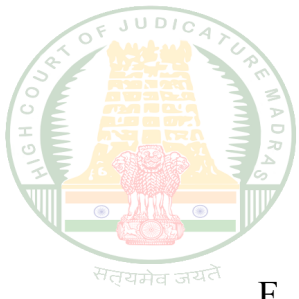
WEB COPY



W.P.Nos.25247 of 2021, etc. batch

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 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 of India, does not create any new mechanism as stated in the order of reference.



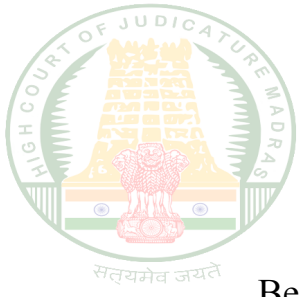
WEB COPY



W.P.Nos.25247 of 2021, etc. batch

- 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 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.

66 The order of reference dated 19.01.2022 is, thus, answered on the aforesaid terms. **Post the matter on 29.07.2022 for reporting compliance.**



W.P.Nos.25247 of 2021, etc. batch

WEB COPY

Before bringing the curtains down, we place on record our profound commendation to Mr. Sharath Chandran, learned *Amicus Curiae*, who, with his inimitable style marked with erudition and sobriety, was of able assistance to us in deciding the questions under reference.

(P.N.P, J.) (R.H.,J.) (A.A.N., J.)
17.06.2022

cad



WEB COPY



W.P.Nos.25247 of 2021, *etc.* batch

P.N. PRAKASH, J.,
R. HEMALATHA, J.
and
A.A. NAKKIRAN, J.
cad

W.P.Nos.25247 of 2021, *etc.* batch

17.06.2022