

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

FRIDAY, THE 30<sup>TH</sup> DAY OF JULY 2021 / 8TH SRAVANA, 1943

WP(C) NO. 9657 OF 2021

PETITIONER:

ROHINI S.T.,  
AGED 32 YEARS, W/O.SURAJ V.S., PISHARATH  
ILLAVUNGALPARAMBU, VADAVUKODE KAILAS COLONY  
P.O., THEVAKKAL, ERNAKULAM, PIN - 682 021,  
PRESENTLY RESIDING AT POOVANTHARA HOUSE,  
PERUMBALAM P.O., CHERTHALA, ALAPPUZHA.

BY ADVS.  
SHIBI.K.P.  
SRI.C.K.SUNIL  
SMT.T.T.JAYANTHY  
SHRI.PRADEEP T.C.

RESPONDENTS:

- 1 THE TAHSILDAR,  
TALUK OFFICE, ALUVA EAST, PIN - 683 112.
- 2 THE DEPUTY TAHSILDAR, TALUK OFFICE,  
CHERTHALA, PIN - 688 570.
- 3 THE VILLAGE OFFICER,  
ALUVA EAST, PIN - 683 112.
- 4 THE VILLAGE OFFICER  
PERUMBALAM VILLAGE, CHERTHALA, PIN- 688 570.  
SMT.PRINCY XAVIER GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 30.07.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**C.R.**

**P.B.SURESH KUMAR, J.**

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**W.P.(C) No.9657 of 2021**  
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**Dated this the 30<sup>th</sup> day of July, 2021.**

**J U D G M E N T**

The question falls for consideration in this matter is whether the competent authority for grant of heirship certificate sought by the petitioner is justified in insisting copy of the First Information Report lodged in connection with the missing of the father of the petitioner for granting the said certificate excluding the name of her father.

2. The mother of the petitioner died on 14.02.2013. It is stated by the petitioner that her father Thankappan had left the company of her mother and the petitioner, about 30 years ago and his whereabouts are not known to them thereafter. It is stated that earlier also, the

father of the petitioner had left the company of her mother and came back after one and a half years, and it is in the said circumstances that the mother of the petitioner did not lodge any complaint with the police in connection with the missing of her father, expecting that he would come back. Since the whereabouts of the father of the petitioner is not known for the last more than 30 years, on the death of the mother of the petitioner, the petitioner preferred an application for heirship certificate. The case of the petitioner is that since the deceased does not have any blood relatives other than the petitioner, and since the whereabouts of her father is not known for the last more than 30 years, it has to be certified by the competent authority that the petitioner is the sole heir of her deceased mother. In the enquiry conducted pursuant to the said application, it was revealed to the competent authority that the petitioner and her father are the only heirs of the deceased and that the whereabouts of her father is not known for the last more than 30 years. Nevertheless, it is stated that the

competent authority, namely the first respondent has issued Ext.P11 communication to the concerned Village Officer to require the petitioner to re-submit the application with a copy of the First Information Report lodged in connection with the missing of the father of the petitioner. The petitioner is aggrieved by Ext.P11 communication. The case set out by the petitioner in the writ petition is that since the mother of the petitioner did not lodge any complaint in connection with the missing of the father of the petitioner having regard to his previous conduct, the petitioner is unable to obtain heirship certificate on account of the insistence of the copy of the First Information Report by the authorities. It is also the case of the petitioner that the insistence of the document aforesaid, in the facts and circumstances of the case is unreasonable, arbitrary and unjust. The petitioner, therefore, seeks appropriate directions in this regard in the writ petition.

3. Heard the learned counsel for the petitioner as also the learned Government Pleader.

4. The learned counsel for the petitioner pointed out that it was revealed in the enquiry conducted by the Village Officer that the whereabouts of the father of the petitioner is not known for the last more than 30 years, and when the materials available before the competent authority indicates that if a person has not been heard of for more than seven years by those who would have naturally heard of him if he had been alive, the competent authority is bound to presume, in the light of Section 108 of the Indian Evidence Act that he is dead and issue heirship certificate without including his name in the certificate. It was contended by the learned counsel that there is no legal basis for insisting copy of the First Information Report lodged in connection with the missing of persons invariably in all cases.

5. Per contra, the learned Government Pleader submitted that a copy of the First Information Report lodged in connection with the missing of persons is insisted while issuing heirship certificate to maintain consistency in the procedure for

grant of heirship certificate and the insistence of the said document cannot, therefore, be said to be unreasonable, arbitrary or unjust.

6. I have considered the submissions made on behalf of the parties on either side.

7. Section 108 of the Indian Evidence Act reads thus:

**108. Burden of proving that person is alive who has not been heard of for seven years.** — [Provided that when] the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is 2 [shifted to] the person who affirms it.

In terms of the extracted provision, if it is established that a person has not been heard of for more than seven years by those who would naturally have heard of him if he had been alive, the burden of proving that the person is alive is on the person who affirms it. In other words, if a person has not been heard of for more than seven years by those who would have

naturally heard of him if he had been alive, in the absence of any materials to show that he is alive, he can be presumed to have been dead. The first respondent does not have a case that the father of the petitioner is alive or that he has been heard of during the last 30 years by the petitioner or any of her relatives. On the other hand, it was revealed in the enquiry conducted on the application preferred by the petitioner that the father of the petitioner has not been heard of for more than 30 years. The enquiry has been conducted by the Village Officer, Aluva East. Ext.P9 is the report submitted by the Village Officer in this regard. The relevant portion of Ext.P9 report reads thus:

ആലുവ ഈസ്റ്റ് വില്ലേജിൽ കാക്കനാട് തറകരയിൽ പിഷാരത്ത് ഇലവുകൾ പറമ്പ് വീട്ടിൽ തങ്കപ്പൻ മകൾ രോഹിണി S.T ലീഗൽ ഹെയർഷിപ്പിനു വേണ്ടി അപേക്ഷിച്ചിട്ടുള്ളതാണ് . പ്രാദേശികാനേഷണത്തിൽ അപേക്ഷകയുടെ പിതാവ് ശ്രീ തങ്കപ്പൻ 30 വർഷമായി നാട് വീട്ട് പോയിട്ടുള്ളതും ടിയാനെ പറ്റിയാതൊരു അറിവും ഇല്ലാത്തതുമാണ് . അപേക്ഷകയുടെ മാതാവ് മാണി 14-2-2013 ൽ മരണപ്പെട്ടിട്ടുള്ളതും അവകാശിയായി അപേക്ഷക ശ്രീമതി:രോഹിണി മാത്രമാണുള്ളതെന്ന് ബോധ്യപ്പെട്ടിട്ടുള്ളതുമാണ്.

Of course, the procedure for grant of heirship certificate shall

be consistent, but the same shall not result in injustice to the parties. In the case on hand, the explanation offered by the petitioner for not lodging the First Information Report in connection with missing of her father is that having regard to the previous conduct of her father, the family expected bona fide that he would come back after some time. The family of the petitioner, according to me, cannot be blamed for having not lodged any First Information Report with the police in a case of this nature. If the family cannot be found fault with for having not lodged the First Information Report, the denial of heirship certificate to the petitioner would be certainly arbitrary, so long as the competent authority does not affirm that the father of the petitioner is alive. I take this view also for the reason that in so far as the competent authority does not entertain a doubt to the stand of the petitioner aforesaid, the petitioner would certainly be issued heirship certificate applied for after seven years, if she lodges a First Information Report now concerning the missing of her father. It is seen that on



similar facts, in W.P.(C) No.8107 of 2010, this Court held that if it is reasonably certain that the person went missing and he has not been heard of for more than seven years, he shall be presumed to have been dead.

In the said view of the matter, the writ petition is allowed and respondents 1 and 2 are directed to issue the heirship certificate sought by the petitioner forthwith, without insisting copy of the First Information Report, if any, lodged in connection with the missing of the father of the petitioner. This shall be done within the minimum period required for issuance of such certificates.

**Sd/-**

**P.B.SURESH KUMAR, JUDGE**

YKB

APPENDIX OF WP(C) 9657/2021

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE PHOTOGRAPH OF PETITIONER'S MARRIAGE UNDER THE SUPERVISION OF THE PETITIONER'S UNCLE.
- EXHIBIT P2 THE TRUE COPY OF SALE DEED NO.2309/1984 IN SY.NO.630/2 OF ALUVA EAST VILLAGE REGISTERED AT ALUVA SRO IN FAVOUR OF MADHAVAI AND PADMANABHAN.
- EXHIBIT P3 THE TRUE COPY OF RELEASE DEED NO.845/2000 IN RE.SY.NO.305/34 (OLD SY.NO.630/2 & 616/10) OF ALUVA EAST VILLAGE REGISTERED AT ALUVA SRO BY THE PETITIONER'S UNCLE SRI.RAGHAVAN IN FAVOUR OF THE PETITIONER'S MOTHER SMT.MANI K.M.
- EXHIBIT P4 THE TRUE COPY OF THE RATION CARD NO.1736010699 IN THE NAME OF PETITIONER'S MOTHER SMT.MANI K.M.
- EXHIBIT P5 THE TRUE COPY OF AADHAR CARD OF PETITIONER'S MOTHER SMT.MANI K.M. WITH AADHAR NUMBER 9847856519548.
- EXHIBIT P6 THE TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE SHOWING THE ADDRESS.
- EXHIBIT P7 THE TRUE COPY OF THE AADHAR CARD NO.975852461250 OF THE PETITIONER SHOWING THE ADDRESS OF THE PROPERTY.
- EXHIBIT P8 THE TRUE COPY OF APPLICATION DATED 5/11/2020 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT FOR OBTAINING THE LEGAL HEIRSHIP CERTIFICATE.
- EXHIBIT P9 THE TRUE COPY OF THE REPORT NO.490/2020

DATED 13/11/2020 OF THE 3RD RESPONDENT,  
VILLAGE OFFICER ALUVA EAST.

EXHIBIT P10 THE TRUE COPY OF THE REPORT NO.77/2020  
DATED 16/11/2020 OF 4TH RESPONDENT,  
VILLAGE OFFICER, PERUMBALAM VILLAGE,  
CHERTHALA TALUK TO THE 2ND RESPONDENT.

EXHIBIT P11 THE TRUE COPY OF REPORT NO.F4-  
11364/2020 DATED 20 /11/2020 ISSUED BY  
THE 2ND RESPONDENT, DEPUTY TAHSILDAR TO  
THE PETITIONER.

EXHIBIT P12 THE TRUE COPY OF THE CERTIFICATE DATE  
06/11/2020 ISSUED BY JINILA RASHEED,  
CHAIRPERSON, STANDING COMMITTEE (HEALTH  
AND EDUCATION), EDATHALA GRAMA  
PANCHAYAT.