



Writ Petition No.26503 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.07.2025

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Writ Petition No.26503 of 2025
and
W.M.P.Nos.29801 & 30157 of 2025

R.Rajeswari
W/o.Raju

... Petitioner

Vs

1.The District Collector,
O/o.The District Collector,
Salem District.

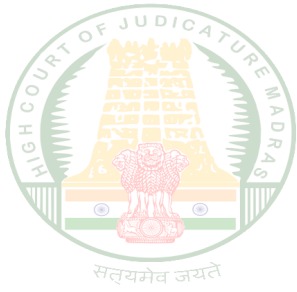
2.The Tahsildar,
O/o.The Tahsildar,
Omalar Taluk, Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the entire records pertaining to the impugned online rejection order passed by the second respondent dated 10.10.2024 and quash the same as illegal and direct the respondents to issue legal heir certificate for the petitioner's husband within the time stipulated by this Court.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.R.Neelakandan,
Additional Advocate General assisted by
Mr.T.M.Rajangam, Government Advocate



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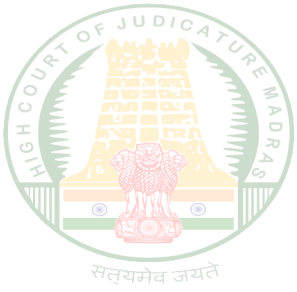
ORDER

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This writ petition has been filed challenging the online rejection order passed by the second respondent dated 10.10.2024 and for a consequential direction to the respondents to issue legal heirship certificate for the petitioner's husband.

2. Heard Mr.T.Thirumurugan, learned counsel for petitioner and Mr.R.Neelakandan, learned Additional Advocate General assisted by Mr.T.M.Rajangam, learned Government Advocate appearing for respondents.

3. The case of the petitioner is that she was married to one Raju on 06.01.1984 and through the wedlock, she has two children viz., Kavitha and Mohankumar. The further case of the petitioner is that her husband went for work on 27.12.2002 and thereafter, never returned back. Till date, there is no information regarding her husband and in spite of best efforts, the petitioner is not able to find out the whereabouts of her husband. A complaint was also given to the police and the same was taken on file in CSR No.1240 of 2004 and thereafter, the police were also not able to find out the whereabouts of her husband.



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4. The petitioner filed a suit before the District Munsif Court, Omalur, seeking for a declaration to declare that there is a civil death of her husband and for other consequential reliefs. This suit was not entertained and it was returned with an endorsement that such a suit is not maintainable by citing an order passed by the Madurai Bench of this Court in W.P.(MD) No.5252 of 2024 dated 14.06.2024.

5. In view of the above, the petitioner submitted an application before the second respondent seeking for legal heirship certificate and the second respondent has rejected the application on the ground that the petitioner has not enclosed the death certificate of her husband. Left with no other option, the present writ petition has been filed before this Court.

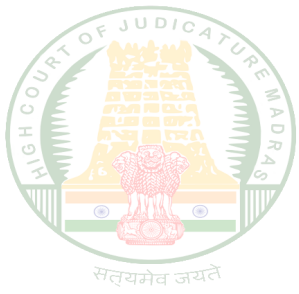
6. At the outset, this Court has to take note of G.O.(Ms) No.478 dated 29.09.2022, which provides the guidelines and procedures to be followed by the competent authority for issuance of legal heirship certificate. Clause 3(2) specifically states that the applicant, who submits an application, in the case of person treated as dead, (person who is missing for a period of 7 years or staying away from the family), the order of the competent Court declaring the person as dead must be enclosed along with the application. This



guideline has been given in order to ensure that the concerned authority does not perform the function of a civil Court by declaring someone as dead.

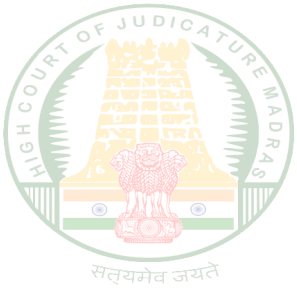
7. Further, on going through the order relied upon by the learned counsel for the petitioner in W.P.(MD) No.5252 of 2024 dated 14.06.2024, this Court finds that even though there is a reference to the Government Order, the effect of the same has not been spelt out in the order. In that order, the Hon'ble Mr.Justice G.R.Swaminathan was dealing with a case where the petitioner's father was not heard of for more than 40 years and the petitioner at that relevant point of time was two years old.

8. Learned Single Judge also considered the scope and ambit of Section 108 of the Indian Evidence Act corresponding to Section 111 of BSA 2023. The learned Judge came to a conclusion that even if a decree is passed by a competent civil Court, it will remain to be a paper decree since there will be no one to oppose the same and ultimately, it will be the Tahsildar, who will be competent to issue the legal heirship certificate. Accordingly, the learned Single Judge has directed the Tahsildar to hold an enquiry and to record the testimony of witnesses and complete the same and thereafter, issue the legal heirship certificate in favour of the petitioner.



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9. The procedure that has been directed to be undertaken by the Tahsildar, virtually elevates the Tahsildar to that of a civil Court. It is only a civil Court, which can record the evidence of witnesses under the Indian Evidence Act (BSA 2023) and appreciate the same and issue a declaration. Section 108 of the Indian Evidence Act corresponding to Section 111 of BSA 2023 merely creates a presumption of death and ultimately, it has to be proved that the concerned person has not been heard of for more than 7 years by those who would have naturally heard of him and the burden of proof is upon that person, who affirms it. Useful reference can be made to the judgment of the Apex Court in *LIC of India v. Anuratha [2004 (10) SCC 131]* wherein the Apex Court in no uncertain terms held that the time or date of disappearance of the concerned person is a matter of evidence and not a presumption and the person, who claims the right must establish the same. In such a scenario, this exercise can be done only before the competent civil Court and it will not be proper to direct the Tahsildar to undertake this exercise. This is in view of the fact that granting such liberty to the Tahsildar may also lead to misuse of the authority. Reference can also be made to the judgment of the Apex Court in *Saroop Singh v. Banto & others [2006 (3) L.W. 6]*.



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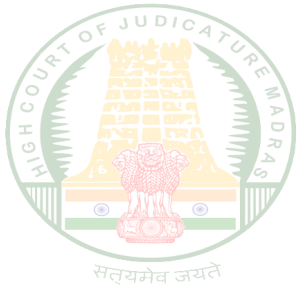
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10. In the light of the above discussion, this Court is not inclined to follow the judgment passed in W.P.(MD) No.5252 of 2024 dated 14.06.2024 and the said judgment revolves around the peculiar facts of the case without making reference to the earlier judgments of the Apex Court. Hence, it is left open to the petitioner to re-present the papers before the District Munsif, Omalur and the concerned Court shall entertain the suit and examine the parties and complete the proceedings within a period of three (3) months from the date of re-presentation of the papers by the petitioner. This liberty will sufficiently take care of the grievance expressed by the petitioner. As and when any such declaration is made, it goes without saying that the second respondent is bound to follow the same and issue the legal heirship certificate.

This writ petition is disposed of in the above terms. No costs.
Consequently, connected miscellaneous petitions are closed.

22.07.2025

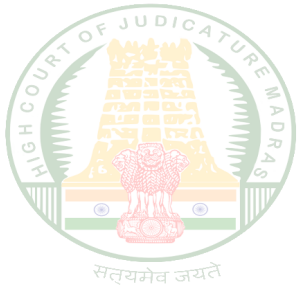
Neutral Citation: Yes
Index: yes
Speaking Order
gm



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- To
- 1.The District Munsif,
Omalur.
 - 2.The District Collector,
O/o.The District Collector,
Salem District.
 - 3.The Tahsildar,
O/o.The Tahsildar,
Omalur Taluk, Salem District.



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N.ANAND VENKATESH, J.

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