



2023/KER/47592

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

MONDAY, THE 7TH DAY OF AUGUST 2023 / 16TH SRAVANA, 1945

WA NO. 1001 OF 2023

AGAINST THE JUDGMENT DATED 15.12.2023 IN WP(C) 16361/2022
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:



BY ADVS.

S.BALACHANDRAN (KULASEKHARAM)

V.R.GOPU

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY ,
REVENUE DEPARTMENT, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM, PIN - 695001
- 2 DISTRICT COLLECTOR,
COLLECTERATE, KUDAPPANAKUNNU P.O.
THIRUVANANTHAPURAM, PIN - 695505
- 3 SUB COLLECTOR,
COLLECTERATE , KUDAPPANAKUNN PO
THIRUVANANTHAPURAM, PIN - 695505
- 4 TAHSILDAR
TALUK OFFICE, HOSPITAL JUNCTION
NEYANTINKARA, THIRUVANANTHAPURAM, PIN - 695121
- 5 VILLAGE OFFICER
MARANALLOOR , NEYANTINKARA THIRUVANANTHAPURAM,
PIN - 695121
BY ADV ADVOCATE GENERAL OFFICE KERALA

OTHER PRESENT:

SRI. SAIGI JACOB PALATTY-SR. GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
07.08.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2023/KER/47592

(CR)

ALEXANDER THOMAS & C. JAYACHANDRAN, JJ.

W.A. No. 1001 of 2023
*[arising out of the impugned judgment dated 15.12.2022
in WP(C)No.16361/2022]*

Dated this the 7th day of August, 2023

JUDGMENT

C. Jayachandran, J.

The judgment impugned in this appeal is the one dated 15.12.2023 rendered by the learned Single Judge in W.P.(C)No.16361/2020. In the writ petition afore-referred, the petitioner sought for issuance of a writ of mandamus, compelling the 2nd respondent District Collector and respondents 3 to 5, being the authorities under him, to issue a Legal Heirship Certificate to the petitioner, in her status as the adopted daughter of deceased Gopalan. Pointing out the absence of a certificate of adoption, or in the alternative, a declaration from a competent civil court, the learned Single



W.A.No.1001/2023

-: 2 :-

Judge dismissed the writ petition, refusing the reliefs sought for.

2. Heard Sri.S.Balachandran (Kulasekharam), learned counsel for the appellant and Sri.Saigi Jacob Palatty, learned Senior Government Pleader on behalf of the respondents. Perused the records.

3. Learned counsel for the appellant submitted that, the petitioner's mother died when she was aged two years and she lost her father at the age of 4 years. Thereafter, she was adopted by one Gopalan K. The petitioner was residing with him and when she attained the age of 18 years, the said Gopalan conducted her marriage with his sister's son, by name Thankaraj. Gopalan died on 11.10.2019, while serving as a part time sweeper in the office of the Deputy Commissioner, GST, Karamana. The petitioner filed Ext.P1 application seeking compassionate appointment



W.A.No.1001/2023

-: 3 :-

under the dying-in-harness scheme. However, the Legal Heirship Certificate sought for was rejected by the Tahsildar. Although an appeal was carried before the Sub-Collector, the same was also dismissed vide Ext.P2 order, which was one passed on the advice of the District Collector. Learned counsel specifically pointed out that, deceased Gopalan had nominated the petitioner vide Ext.P4 to receive the death cum retirement gratuity, acknowledging the petitioner as his step daughter. As per Ext.P5 settlement deed, Gopalan settled certain items of properties on the petitioner and her husband. Again, Ext.P6 consent letter was issued by Gopalan to the Manager of Indian Bank, Perumpazhoor branch, stating that the petitioner is his adopted daughter and constituting her as his nominee in respect of the account maintained with that bank. Finally, learned counsel



W.A.No.1001/2023

-: 4 :-

emphasized on Ext.P7 registered Will executed by the said Gopalan recognizing the petitioner as his adopted daughter and bequeathing on her the right to realize all service benefits, pursuant to his death. It was argued that the afore-referred documents were not considered by the learned Single Judge, while rejecting his prayer in the writ petition by virtue of impugned judgment. It was further argued that, Gopalan could not have adopted the petitioner in terms of Section 10 of the Hindu Adoptions and Maintenance Act, 1956, since, the petitioner is a christian by religion, wherefore, it is futile for the respondent authorities to insist for a certificate of adoption in terms of the said Act. There was no law enabling an adoption of a christian adoptive daughter by a hindu adoptive parent and, therefore, insistence of proof of a valid and



W.A.No.1001/2023

-: 5 :-

legal adoption is an impossibility in itself. On such premise learned counsel would seek to set aside the impugned judgment and allow the prayer for issuance of a Legal Heirship Certificate.

4. Per contra, the learned Senior Government Pleader argued to sustain the judgment impugned. It was argued that in the absence of a valid and legal document convincing the factum of adoption, the appointing authority cannot be blamed for not processing the claim for compassionate appointment.

5. Having heard the learned counsel appearing for both sides, we cannot, but dismiss the instant appeal, since we find no infirmity or illegality in the judgment impugned. We will straight away refer to the documents produced by the petitioner in support of her plea that she is the adopted daughter of late Gopalan. The first



W.A.No.1001/2023

-: 6 :-

document is Ext.P4 nomination under Rule 76 (a) of Part III, KSR. The nomination is one in Form No.4D, which itself indicates a situation where the officer has no family. We notice that the relationship with the nominee is shown as step daughter; and not, adopted daughter. Coming to Ext.P5 settlement deed in favour of the petitioner, we notice that there is no recital, whatsoever, suggesting that the petitioner was adopted by deceased Gopalan and that she was being treated in all respects as an adopted daughter, with all incidents of a biological daughter. All what is seen recited in Ext.P5 is that the petitioner is the wife of Thankaraj, who is the sister's son of the executant Gopalan and that the said couple is taking care of all the requirements of the settlor and his sister. The same is the situation with respect to Ext.P7 Will. One



W.A.No.1001/2023

-: 7 :-

additional averment in Ext.P7 is that the petitioner Prameela was residing along with the testator Gopalan from her childhood onwards and that she was given in marriage by Gopalan to his sister's son Thankaraj. These averments are far below the legal requirement, even to suggest remotely a valid adoption of the petitioner by the said Gopalan. Coming to Ext.P6, the language employed is "foster daughter" (പുലർത്തുപുത്രി), where again, a recital to the effect that the petitioner is the adopted daughter of the said Gopalan is conspicuously absent.

6. In these circumstances, we are not satisfied of the petitioner's so - claimed status as the adopted daughter of Gopalan. In the absence of a valid and legal adoption, and in any case, in the absence of documents evidencing the factum of adoption, albeit not in terms of law,



W.A.No.1001/2023

-: 8 :-

we cannot find fault with the respondent authorities in not issuing a Legal Heirship Certificate in favour of the petitioner. More than the absence of a legal document evidencing a legal adoption, what weigh with us to refuse the relief sought for is the complete dearth of evidence suggesting an inference as to the factum of adoption from the materials on record.

7. In the given circumstances, we are not addressing certain incidental questions posed by the learned Special Government Pleader, that is to say, whether the petitioner is qualified to seek compassionate appointment as a last grade servant; and whether the post of a part time sweeper will come within the posts scheduled under the compassionate appointment scheme etc. The question as to whether the petitioner - who is living with her husband and two children, who have attained



W.A.No.1001/2023

-: 9 :-

majority - is a dependent of deceased Gopalan also looms large.

8. The decisions relied upon by the counsel for the petitioner are not relevant to the controversy in question, as rightly held by the learned Single Judge.

9. We are fortified in our view by a Bench decision of this Court in **Maxin George v. Indian Oil Corporation** [2005 (3) KLT 57], where also the claim was one for compassionate employment scheme by an adopted son. The Division Bench rejected the claim with the following finding, i.e. paragraph no.14.

"14. Though after the amendment of the Hindu Adoptions and Maintenance Act by Act 45 of 1962 an orphan also could be adopted, such adoption also could be made only if the guardian gave the child in adoption. Among Christians also formalities of adoption takes in the physical act of giving and taking of the child. Obviously the giver of the child has to be one duly empowered or competent in that behalf. Authorities on the subject seem to be unanimous in the view that an abandoned child fostered by a couple does not attain the status of the adopted child of that couple. Obtaining an



W.A.No.1001/2023

-: 10 :-

order appointing one as guardian of such a child under the Guardians and Wards Act also does not confer on the child the status of an adopted child. In the absence of evidence of a valid adoption having been made in any of the recognised forms undergoing the formalities of adoption recognised by the community an adoption cannot become legal. We may also notice with approval in this context the decision of a learned Judge of this Court in **Biju Ramesh & Anr. v. T.P.Vijayakumar & Ors., 2005 (2) KLT 960 2005 (2) KLJ 73.**"

10. In the given facts also, there is nothing evidencing the physical act of giving and taking of the child, nor is there any competent giver of the child in adoption.

In the light of the above discussion, this appeal is devoid of any merit and is therefore dismissed.

Sd/-

**ALEXANDER THOMAS,
JUDGE**

Sd/-

**C. JAYACHANDRAN,
JUDGE**

TR