

BEFORE

THE HON'BLE MR. JUSTICE M.R. PATHAK

Heard Mr. D. Panging, learned counsel for the petitioner and Mr. R. H. Nabam, learned counsel appearing on behalf of respondent No. 3, the District & Sessions Judge, West Sessions Division, Yupia, Papum Pare District, Arunachal Pradesh.

The petitioner, herein, submits that her deceased husband, namely, Sri T. C. Teli during his life time initially married to one Smt. Apum Welly and she expired in the year 1991 leaving her husband T. C. Teli and her 3 children from their conjugal life. Thereafter, said T. C. Teli married the petitioner and out of their wedlock 3 children were born to them. Later said T. C. Teli married another, namely, Smt. Sonam Teli in the year 1997 and 3 more children were born to them. Said T. C. Teli, husband of the petitioner expired on 14.03.2014, at Itanagar, after a prolonged illness. The petitioner felt it necessary to obtain Succession Certificate for the properties of her late husband T. C. Teli, both movable & immovable including debts & securities, which he left behind.

For the same; the petitioner procured the application form from the Court of District Judge, Yupia for grant of Succession Certificate. She filled up the names of all the surviving relatives of her deceased husband said T. C. Teli, including herself as first wife and said Smt. Sonam Teli as the second wife and all the nine children of said T. C. Teli as stated above, in the space that is provided in the application form, annexing all the relevant documents including the affidavits sworn by the petitioner and No Objection Certificate issued by her adult children. But along with the said application form, the petitioner could not annex the No Objection Certificate of said second wife of her deceased husband T.C. Teli, namely, Smt. Sonam Teli as the petitioner and said Smti. Teli are not in good terms with each other.

The petitioner on 22.09.2014 submitted her application form for obtaining Succession Certificate of her deceased husband T. C. Teli before the Sheristadar of the Court of District & Sessions Judge Court, West Sessions Division, Yupia, Papum Pare District, Arunachal Pradesh. But the said Sheristadar refused to accept the application form of the petitioner on the ground that the No Objection Certificate of the second wife, namely, Smt. Sonam Teli was not annexed with the application form for grant of Succession Certificate. It was informed by the said Sheristadar that there have been strict instruction from the Court of District & Sessions Judge, Yupia not to accept any application of Succession Certificate unless the same is accompanied by the No Objection Certificate(s) of all the living relatives of the deceased person and that to that extent a notice was already issued by the said District Judge. As such, the application of the petitioner for grant of Succession Certificate of her husband was not accepted by the concerned Court.

The petitioner could obtain a copy of the said Notice being No. DSC(W)/Admn-02/12-13 dated 05.02.2013 issued by the respondent No. 3, the District & Sessions Judge, West Sessions Division, Yupia and in the said notice dated 05.02.2013, for requirement for application in respect of Succession Certificate No Objection Certificate (NOC)/Declaration in affidavit from all the legal heirs of deceased mentioned in application form is required to be submitted by the applicant along with the prescribed form.

Being aggrieved with such action of the respondent No. 3, the District & Sessions Judge, West Sessions Division, Yupia in issuing the impugned notice dated 05.02.2013 in respect of grant of Succession Certificate in violation of the provisions of the Indian Succession Act, 1925; the petitioner has filed this petition.

The respondent No. 3, through the Judicial Magistrate, First Class-cum-Civil Judge (Junior Division), Capital Complex, Yupia, Papum Pare District, Arunachal Pradesh has filed the affidavit in the matter and submitted that the impugned notice dated 05.02.2013 is only a notice regarding requirement for application in respect of succession and guardianship certificate for the knowledge and convenience of the applicant in order to reduce their time and energy considering the long distance of the Court at Yupia from Itanagar and the condition No. 2 of the said Notice (impugned Notice dated 05.02.2013) was meant for legal heirs of

the deceased especially who are unable to be present in the Court in person to have their say regarding the grant of succession certificate in favour of the applicant either in affirmative saying no objection or in negative raising objection, considering the fact that the District Court at Yupia is much away from Itanagar and Naharlagun. The respondent No. 3, however, contended that for the legal heirs who are present in the Court and express their views either in negative or in affirmative regarding the grant of succession certificate in favour of an applicant, such requirement is not mandatory. The said respondent also stated that by a subsequent Notice being No. DSC(W)/Admn(Vol-1) -16/2014 dated 20.10.2014, the respondent No. 3 clarified the serial No. 2 of the impugned Notice dated 05.02.2013 (during pendency of this petition), stating that Office of the District Court has no personal interest in issuing the said Notice, but it is only an attempt to reduce the inconvenience of general public and it can be done away with or withdrawn with a least effort merely on receipt of an information about inconvenience being caused to the public due to said notice from any of the applicant or general public.

For better understanding the impugned Notice dated 05.02.2013 and subsequent Notice dated 20.10.2014 are reproduced below :-

OFFICE OF THE DISTRICT & SESSIONS JUDGE  
WEST SESSIONS DIVISION, YUPIA, PAPUMPARE DISTRICT  
ARUNACHAL PRADESH  
No. DSC(W)/Admn(Vol-1) -16/2014  
N O T I C E  
20.10.2014

With reference to earlier notice dated 05/02/2013, regarding the documents required for obtaining Succession Certificate mentioned under Sl. No. 2, it is to clarify that the No Objection Certificate/Declaration in affidavit is necessary in case of a legal heirs of the deceased who is unable to present in the court in person to give his/her statement and not compulsory for those who are present in the Court and willing to express his objection or otherwise to the grant of Succession Certificate in favor of the applicant.

The notice dated 05.02.2013 stands explained into the above.

Sd/- Illegible  
(BUDI HABUNG)  
District & Sessions Judge,  
West Session Division  
Yupia.

Section 371 and 372 of the Indian Succession Act, 1925 read as follows:-

"371-Court having jurisdiction to grant certificate: The District Judge within whose jurisdiction the deceased ordinarily resided at the time of his death, or, if at that time he had no fixed place of residence, the District Judge, within whose jurisdiction any part of the property of the deceased may be found, may grant a certificate under this part."

"372- Application for certificate. (1) Application for such certificate shall be made to the District Judge by a petition signed and verified by or on behalf of the applicant in the manner prescribed by the Code of Civil Procedure, 1908, for the signing and verification of a plaint by or on behalf of a plaintiff, and setting forth the following particulars, namely:

- (a) the time of the death of the deceased.
- (b) the ordinary residence of the deceased at the time of his death and, if such residence was not within the local limits of the jurisdiction of the Judge to whom the application is made, then the property of the deceased within those limits;
- (c) the family or other near relatives of the deceased and their respective residence;
- (d) the right in which the petitioner claims;

(e) the absence of any impediment under Section 370 or under any other provision of this Act or any other enactment to the grant of the Certificate or to the validity thereof if it were granted;

(f) the debts and securities in respect of which the certificate is applied for.

(2) If the petition contains any averment which the person verifying knows or believes to be true, that person shall be deemed to have committed an offence under Section 198 of the Indian Penal Code, 1860.

(3) Application for such a certificate may be made in respect of any debt or debts due to the deceased creditor or in respect of portions thereof.

From the above, it is clear that Section 372 of Indian Succession Act, 1925 lays down the requirements while submitting application for Succession Certificate.

It is a settled law that if the law requires a particular thing should be done in a particular manner it must be done in that way and none other.

The Hon'ble Apex Court in the Case of Dipak Babaria and another -Vs- State of Gujarat and others reported in (2014) 3 SCC 502 settled that -

"60. We may refer to Lord Bingham's work titled 'Rule of Law' where in the Chapter on exercise of power, he observes that:

'Ministers and public officers at all level must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably'.

He quotes from R v. Tower Hamlets London Borough Council [1988] AC 858, which states:

'Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely, that is to say, it can validly be used only in the right and proper way which the parliament, when conferring it, is presumed to have intended.' "

"61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor (1875) 1 Ch D 426, 431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

"8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted...."

This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad reported in 1999 (8) SCC 266, Dhananjaya Reddy Vs. State of Karnataka reported in 2001 (4) SCC 9 and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited reported in 2008 (4) SCC 755."

"72. In our view, considering the scheme of the act, the process of industrialization must take place in accordance therewith. As stated earlier if the law requires a particular thing should be done in a particular manner it must be done in that way and none other. The State cannot ignore the policy intent and the procedure contemplated by the statute. In the instant case, the State could have acquired the land, and then either by auction or by considering the merit of the proposal of respondent No.5 allotted it to respondent No.5. Assuming that the application of the Respondent No 5 was for a bona-fide purpose, the same had to be examined by the industrial commissioner, to begin with, and thereafter it should have gone to the collector. After the property vests in the Government, even if there were other bidders to the property, the collector could have considered the merits and the bona-fides of the application of Respondent No. 5, and nothing would have prevented him from following the course which is permissible under the law. It is not merely the end but the means which are of equal importance, par

ticularly if they are enshrined in the legislative scheme. The minimum that was required was an enquiry at the level of the Collector who is the statutory authority. Dictating him to act in a particular manner on the assumption by the Minister that it is in the interest of the industrial development would lead to a breach of the mandate of the statute framed by the legislature. The Ministers are not expected to act in this manner and therefore, this particular route through the corridors of the Ministry, contrary to the statute, cannot be approved. The present case is clearly one of dereliction of his duties by the Collector and dictation by the Minister, showing nothing but arrogance of power."

From the aforesaid facts and circumstances of the case, the Court is of the view that the Notice No. DSC(W)/Admn-02/12-13 dated 05.02.2013 as well as the subsequent Notice No. DSC(W)/Admn(Vol-1)-16/2014 dated 20.10.2014 issued by the respondent No. 3 District & Sessions Judge, West Sessions Division, Yupia, Papum Pare District, Arunachal Pradesh are not in conformity with the provisions as prescribed by the Section 372 of the Indian Succession Act, 1925. As such the said impugned Notice dated 05.02.2013 and the subsequent Notice dated 20.10.2014 are being illegal/perverse are hereby set aside and quashed as Section 372 of Indian Succession Act, 1925 does not provide for submission of No Objection Certificate/Declaration in the form of an affidavit from all the legal heirs of the deceased person while applying for Succession Certificate.

In the event of preferring any application for Succession Certificate under the Indian Succession Act, 1925, if the applicant fulfills required criteria as provided under Section 370, 371 & 372 of the said 1925 Act, the learned Court i.e. the Courts of District Judge, including the Court of District & Sessions Judge, West Sessions Division, Yupia, Papum Pare District, Arunachal Pradesh shall entertain all such application filed by an applicant and shall take up the matter for grant of Succession Certificate in accordance with law.

With aforesaid observation, this writ petition is allowed. No order as to cost