



W.P.(MD) No.20196 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.(MD) No.20196 of 2023

and

W.M.P.(MD)No.16667 of 2023

Radha

: Petitioner

-vs-

- 1.The State Government of Tamil Nadu
Represented by Principal Secretary,
(GO(ms)314-Courts-II, Home Department)
St. George Fort,
Chennai-600 009.
- 2.The Madras High Court
Represented by
The Registrar General Madras High Court,
High Court, Chennai 600 014.
- 3.The District Judge,
The District Court Campus,
Thanthonimalai,
Karur-639 007.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, to declare that G.O.Ms.No.314, dated 27.06.2023 in ultra vires the Family Court Act and violative of Article 14 and 21 of the Constitution of India and consequently quash the same.



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For Petitioner : Mr.S.Jayavel
For R1 : Mr.P.Thilakkumar
Government Pleader
For R2 & R3 : Mr.K.Samidurai

ORDER

[Order of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This writ petition is filed for a declaration that G.O.Ms.No.314, dated 27.06.2023 is ultra vires the Family Courts Act, and violative of Article 14 and 21 of the Constitution of India. By the impugned Government order, the territorial jurisdiction of the Family Court at Karur is extended to the entire District of Karur. The writ petitioner, who is a litigant and whose case in H.M.O.P.No.109 of 2019 is pending before the Sub Court, Kulithalai, has come forward with this challenge to the Government Order.

2. Heard *Mr.S.Jayavel*, the learned counsel appearing on behalf of the petitioner and *Mr.P.Thilakkumar*, the learned Additional Government Pleader appearing on behalf of the first respondent *Mr.K.Samidurai*, the learned counsel appearing on behalf of the respondents 2 and 3.



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3. The learned counsel for the petitioner firstly would submit that without establishing the Family Court, as per Section 3(1) of the Family Courts Act, straightaway the jurisdiction is extended to the entire District in exercise of the power under Section 3(2) of the Family Courts Act and therefore, the impugned Government Order is illegal. Secondly, he would submit that upon perusal of the preamble and Section 1 of the Family Courts Act, it can be seen that only the State can be reckoned as a unit for extending the Act and therefore, extending it to the whole of Karur District alone is illegal. The third contention of the petitioner is that when in other Districts, Sub Courts are dealing with the matter, extending for the Karur District alone is discriminatory. It is the final contention of the petitioner that the case of the petitioner is an advanced stage and at this stage, if it is transferred to the Family Court that would lead for *de nova* proceedings resulting in hardship. Apart from the case, the learned counsel for the petitioner submits that now by virtue of extension of jurisdiction of the Family Court, all the matters throughout the District, including all the maintenance petitions before the learned Judicial Magistrates under Section 125 of the Code of Criminal Procedure will be transferred to the headquarters and people from far of places would find it extremely difficult. Already when they are struggling and are praying for maintenance, making



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them to travel upto the District headquarters would result on grave hardships to such litigants.

4. We have considered the said submissions made on behalf of the learned counsel for the petitioner.

5. For ready reference Section 3 of the Family Courts Act is extracted hereunder:

“3. Establishment of Family Courts.—(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,—

(a) shall, as soon as may be after the commencement of this Act, established for every area in the State comprising of city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.”

6. Thus it can be seen from the above, in consultation with the High Court, the State Government is empowered to alter modify or extend the



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jurisdiction of the Family Court. That being the position, when already the Family Court in Karur has been duly constituted as per Section 3(1) of the Act, there is no illegality in extending the jurisdiction as per Section 3(2) of the Act and as such the first contention of the petitioner is totally illogical and cannot be countenanced. The second contention of the petitioner that District cannot be a unit is again fallacious, because Section 1 of the Family Courts Act only deals with extension of Family Courts Act. Already, the Family Courts Act is extended throughout the State of Tamil Nadu. Therefore, that has got no application for increasing or altering the territorial limit of the Family Court. The third contention of the learned counsel for the petitioner is that the impugned Government Order is discriminatory. As a matter of fact, it cannot be held to be discriminatory and as per procedure as and when the recommendations are made by the High Court, it is in a phased manner, depending on the criteria, the jurisdiction of the Family Courts are being extended. Not only Karur, there are several other district in which, the exercise has been carried out. Finally, the learned counsel submitted that the case of the petitioner is in an advanced stage and therefore, it would cause hardship. Whenever a Family Court jurisdiction is extended and the case is transferred, it goes without saying that the matter will be considered from the stage in which, the case lies and therefore, the petitioner cannot plead any hardship in this



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regard. Even if any procedural things have to be complied, then as per the mandate of law, the petitioner has to comply and she cannot complain of hardship on that score.

7. The general argument is made regarding the hardship which will be faced by the poor and ordinary litigants whose petitions for maintenance under Section 125 of the Code of the Criminal Procedure which would now be transferred to the Family Court. While the grievance expressed by the learned counsel for the petitioner may be genuine, that cannot be a ground for challenging the Government order. The said grievance expressed by the learned counsel for the petitioner has to be taken note of by the concerned Family Court and by extending appearance through virtual mode and also dispensing with the presence for unnecessary hearings etc., the said hardship can be mitigated and taken care of by the concerned Courts.

8. With the above observations, finding no merits, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

The Principal Secretary,
State Government of Tamil Nadu
(GO(ms)314-Courts-II, Home Department)
St. George Fort,
Chennai-600 009.



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