



WMP(MD). No.21496 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Special Original Jurisdiction

Monday, the Twenty Seventh day of November Two Thousand and Twenty Three

PRESENT

**The Hon`ble Mr.Justice S.M.SUBRAMANIAM
AND
The Hon`ble Mr.Justice V. LAKSHMINARAYANAN**

**WMP(MD). No.21496 of 2023
in
WP(MD)No.16936 of 2023**

1.The District Collector
Sivagangai

2.The Revenue Divisional officer,
Devakottai.

3.The Tahsildhar,
Karaikudi,
Sivagangai District

... Petitioner/ Respondents 1 to 3

Vs

1 Rathika
W/o.Perrier Karuppan
102 Malaikandaan Village
Vettriyur Post Via Kallal,
Karaikudi Taluk
Sivagangai District

... 1st Respondent/Writ Petitioner



WMP(MD). No.21496 of 2023

2 The Malaikandaan Panchayat
Through its President/ Executive Officer
Kallal Panchayat Union
Karaikudi Taluk
Sivagangai District

... Respondent/Respondent

Prayer in WMP(MD). No.21496 of 2023:

To grant leave to file this counter affidavit in WP(MD) 16936/2023 and pass such further or other orders as this Honble Court may deem fit and proper case and thus render justice.

Prayer in WP(MD). 16936/ 2023 :

Writ Petition, filed under Article 226 of the Constitution of India, praying this court to issue a Writ of Certiorari to calling for the records relating to the impugned proceedings in Na.Ka.U.K.No.2/2023 dated 01.07.2023 issued by the 4th respondent purported to be a notice under section 131(2) read with section 222 of the Tamil Nadu Panchayats Act and quash the same and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of this case and thus render justice.

ORDER:- This Writ Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.M.Lingadurai Special Government Pleader for the Petitioner and of Mr.V.R.Shanmuganathan Advocate for the 1st Respondent and of Mr.J.Ashok Advocate for the 2nd Respondent, this Court made the following order:

[Order of the Court was made by S.M.SUBRAMANIAM, J.]

The present Writ Miscellaneous Petition has been filed to grant leave to file counter affidavit in W.P.(MD).No.16936 of 2023.

2. The procedure of filing petition to grant leave to file counter affidavit and petition to condone delay in Writ Petitions emanated from and out of the order of

<https://www.mhc.tn.gov.in/judis>



WMP(MD). No.21496 of 2023

the learned Single Judge of this Court in W.M.P.(MD).No.16754 of 2023 in W.P.
(MD).No.22151 of 2016 dated 22.08.2023.

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3. The Writ Courts are receiving counter affidavit beyond the period of eight weeks, as contemplated under Rule 24(2) of the High Court Writ Rules, only after filing a petition to grant leave or to condone the delay in filing the counter affidavit.

4. The Writ Rules was framed by virtue of Article 225 of the Constitution of India and all other powers enabling the High Court to make rules to regulate the proceedings under Article 226 of the Constitution of India. The procedures are stipulated in the Writ Rules for the purpose of regulating the writ proceedings, pleadings and filing of documents in the writ proceedings.

5. However, one has to borne in mind the constitutional powers of the High Court to issue certain writs under Article 226 of the Constitution of India. No doubt, the procedures, as contemplated under the Code of Civil Procedure, are inapplicable to the writ proceedings in view of explanation to Section 141 of the Code of Civil Procedure, which stipulates that *"In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under Article 226 of the*



WMP(MD). No.21496 of 2023

Constitution". Therefore, the procedures contemplated under the Writ Rules are for the benefit of the litigants and lawyers for the purpose of filing Writ Petitions and to regulate the writ proceedings. The said Rules cannot have the effect of diluting the spirit of Article 226 of the Constitution of India.

6. Even a letter can be treated as writ proceedings, is the dictum of the Apex Court and the High Courts across the country. The extraordinary jurisdiction conferred on the High Courts to issue certain prerogative writs under Article 226 cannot cause any impediment for the parties to place their documents, counter affidavits etc. No doubt, the Rules provide time limit for the purpose of filing counter affidavit. However, in the interest of justice, the High Court may accept the counter affidavit even beyond the period of eight weeks and in such circumstances, insisting the parties to file miscellaneous petition to grant leave or condone the delay would further cause inconvenience and would result in prolongation of writ proceedings, which is not otherwise intended under Article 226 of the Constitution.

7. The strict Rules or the procedures contemplated under the Rules would have no application in respect of the proceedings under Article 226 of the Constitution of India. Such Rules, if enforced, would result in denial of speedy remedy to the litigants under the writ proceedings and ultimately, the spirit of the



WMP(MD). No.21496 of 2023

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constitutional powers would be diluted. Procedural violations would not stand in the way of the High Court to issue writs under Article 226. Therefore, restraining any party to the writ proceedings to file counter affidavit beyond the period of eight weeks in the absence of a petition would cause inconvenience and would result in longevity of writ proceedings. The parties are unnecessarily put to hardship by repeatedly filing such petitions to file a counter affidavit or the condone delay petition, as the case may be.

8. Even oral submissions in this regard by the litigant or through the counsel would be sufficient to grant leave or to condone the delay, to accept the counter affidavit. In such circumstances, the High Court is expected to exercise the inherent powers conferred under the Constitution in the interest of justice, instead of directing the parties to file petition to grant leave or to condone the delay, which would cause multiplicity of miscellaneous petitions in a writ proceedings and it would be difficult for the Courts to dispose of the main Writ Petitions in a speedy manner. Lengthy procedures contemplated under the Code of Civil Procedure are inapplicable. Therefore, the writ procedures are to be simplified and oral submissions in this regard either by the litigants or by the learned counsels, would be sufficient to condone the delay in filing the counter affidavit or to grant leave to file a counter affidavit or reply affidavit or documents or otherwise.



WMP(MD). No.21496 of 2023

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9. Therefore, the time limit contemplated under Rule 24(2) of the High Court Writ Rules is only directory and cannot be construed as mandatory and in the event of declaring it as mandatory, the very importance and the effectiveness of writ proceedings under Article 226 will be whittled down. The Apex Court time and again considered the prescription of time limits in certain statutes and held that such limitations are directory only for the purpose of expediting the proceedings and not mandatory¹. Further, Writ Rules are only guiding principles and the Writ Rules framed by various High Courts across the country differ from one another.

10. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See *Popatrao Vyankatrao Patil Vs. State of Maharashtra and others*, (2020) 19 SCC 241]). And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its

¹ <https://www.mhc.in.gov.in/judis>
¹ *Salem Advocate Bar Association, T.N. Vs. Union of India* – (2005) 6 SCC 344



WMP(MD). No.21496 of 2023

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instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.

11. It could thus be seen, that even if there are disputed questions of fact which fall for consideration, but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India.

12. Therefore, we are of the considered opinion that the eight weeks' time limit contemplated under Rule 24(2) of the High Court Writ Rules is directory and non-adherence of the said time limit would not be a ground to reject the counter affidavit or the parties to be directed to file a miscellaneous petition to grant leave or to condone the delay. But oral request, if made, is to be considered for the purpose of condoning the delay or to grant leave or otherwise.

13. As far as the writ proceedings is concerned, the Courts are granting adjournments even at the admission stage or ordering notice of motion or directing



WMP(MD). No.21496 of 2023

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the respondents to secure instructions for the purpose of disposing of the Writ Petitions. A question arises, in such circumstances, that the eight weeks' time is to be applied or not. In the absence of any rule nisi notice to the parties, Rule 24(2) of the High Court Writ Rules has no application. In such writ proceedings, counter affidavits are filed even beyond the period of eight weeks and the parties cannot be directed to file any such petition to grant leave or condone delay petitions. In either of the circumstances, such petitions become unnecessary.

14. In view of the above observations made by us, the present Writ Miscellaneous Petition becomes unnecessary and the same stands dismissed as unnecessary. The counter affidavit filed by the respondents in the writ proceedings is directed to be accepted and taken on file and accordingly, the Writ Petition is to be disposed of.

15. Registry is directed to mark a copy of this order to the Registrar General of Madras High Court for necessary instructions.

Sd/-

Assistant Registrar(CS I)

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/12/2023

Sub Assistant Registrar(CS)



WMP(MD). No.21496 of 2023

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3. The Tahsildhar,
Karaikudi,
Sivagangai District
4. The Registrar General,
Madras High Court,
Madras.
5. The Additional Registrar General,
Madurai Bench of Madras High Court,
Madurai.
6. The Sub- Assistant Registrar,
Writ A.E. Section,
Madurai Bench of Madras High Court, Madurai.
7. The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.
8. The Section Officer,
'F' Section,
Madurai Bench of Madras High Court,
Madurai.



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WMP(MD). No.21496 of 2023

ORDER DATED : 27/11/2023

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ORDER

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WMP(MD). No.21496 of 2023

IN

wp(md) No.16936 of 2023

Giving direction and etc.

as stated within.

MK/08.12.2023 10P 9C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023