



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM :

WEB COPY

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.19191 OF 2018

AND

W.M.P.NOS.22568 AND 22569 OF 2018

R.Ramesh

... Petitioner

.Vs.

1. The Assistant Engineer,
The Public Works Department,
(Water Resources Department),
Irrigation Part-1,
Villupuram.

2. The Villupuram Municipality,
Rep. by the Commissioner,
Villupuram,
Villupuram District.

... Respondents

PRAYER:-

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the 1st respondent in connection with his notice dated 07.02.2018 issued to the petitioner in respect of S.No.299/3A, 3B, 4 & 5 of V.Marudhur Village, Villupuram Taluk and District and quash the same.

For the Petitioner : Mr.R.Srinivas

For the Respondents : Mr.P.Muthukumar
State Government Pleader
For R-1

Mr.P.Srinivas
For R-2



ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

WEB COPY

The writ petition has been filed to seek a direction on the respondents to quash the notice dated 07.02.2018 in regard to the land in S.No.299/3A, 3B, 4 and 5 of V.Marudhur Village of Villupurram Taluk and District.

2. The facts on record show that after the issuance of the notice under Section 7 of the Tamil Nadu Land Encroachment Act, 1905, an order was passed under Section 6 of the Act of 1905 on 07.02.2018. A challenge to the order aforesaid has been made in this writ petition despite the availability of appeal under Section 10 of the Act of 1905. It is more so when the writ petition involves questions of fact, thus, the jurisdiction under Article 226 of the Constitution of India would not be available. The facts involved are in regard to the encroachment made by the petitioner in a land belonging to the waterbody though disputed by the petitioner, rather an order of regularisation has been placed on record. It is without referring to any patta in favour of the petitioner, thus, regularisation of the same may not create any right and further more, it cannot be in the land of a waterbody though a dispute about the location of the waterbody has been raised.

3. The aforesaid questions of fact cannot be decided and therefore, the writ petition is not maintainable for the aforesaid and it is, accordingly, dismissed. It is, however, with liberty to the petitioner to avail the remedy of appeal if the same is maintainable now. It is made clear that the pendency of the appeal, if it is maintainable as per Section 10 of the Act of 1905, without an interim order, would not preclude the respondents to take action for removal of the encroachment. There will be no order as to costs. Consequently, W.M.P.Nos.22568 and 22569 of 2018 are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sra



To

1. The Assistant Engineer,
The Public Works Department
(Water Resources Department),
Irrigation Part-1,
Villupuram.
2. The Commissioner,
The Villupuram Municipality,
Villupuram,
Villupuram District.

+1cc to Mr.R.Srinivas, Advocate, S.R.No.13570

W.P.NO.19191 OF 2018

NRL(CO)
PBS/03/03/2022