

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 822 of 2015 (C)

PETITIONER(S):

**SAJI EMMANUEL, AGED 43 YEARS,
S/O.P.T.EAMMANUEL, PERMALAYIL HOUSE,
ETTUMANOOR, KOTTAYAM.**

BY ADV. SRI.M.J.THOMAS

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
COLLECTORATE, KOTTAYAM- 686 001.**
- 2. THE GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
COLLECTORATE P.O., KOTTAYAM- 686 001.**
- 3. THE TAHSILDAR, TALUK OFFICE,
MEENACHIL, KOTTAYAM- 686 577.**

BY SR.GOVERNMENT PLEADER SRI.MOHAMMED SHAFI.M

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** TRUE COPY OF THE BUILDING PERMIT DATED 23-08-2014 ISSUED BY THE SECRETARY, KANAKKARY GRAMA PANCHAYAT.
- EXT.P2:** TRUE COPY OF THE GOVERNMENT ORDER CU(K)NO.12/2014 DATED 15-11-2014.
- EXT.P3:** TRUE COPY OF THE PROCEEDINGS NO.380/2014-2015/2236 DOY/ML/2014 DATED 22-12-2014 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3(A):** TRUE COPY OF THE SITE PLAN ATTACHED TO EXT.P3.
- EXT.P4:** TRUE COPY OF THE RECEIPT EVIDENCING PAYMENT OF RS.48,000/- AS ROYALTY.
- EXT.P5:** TRUE COPY OF THE PROHIBITION ORDER DATED 06-01-2015 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

P.R. RAMACHANDRA MENON J.

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W.P.(C) No. 822 of 2015

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Dated, this the 16th day of January, 2015

JUDGMENT

The petitioner wanted to construct a residential building in the property belonging to him and necessary permit was obtained from the concerned Panchayath, as borne by Ext. P1. By virtue of the enabling provision under the Kerala Minor Mineral Concession Rules, particularly Rule 8 (1B) and the orders issued by the Government, no NOC/permit is required to effect excavation for construction, if it is covered by a valid permit. But, for transporting the ordinary earth necessary P Forms have to be obtained from the concerned Geologist.

2. According to the petitioner, the second respondent has issued Ext. P3 proceedings on 22.12.2014 enabling the petitioner to remove the excavated ordinary earth to an extent of 2310 MT, subject to specific conditions as stipulated therein, which is valid till 21.01.2015. It is stated that the petitioner was carrying out the operation strictly in conformity with Ext. P3, but the same has been intercepted by the 3rd respondent issuing Ext. P5 stop memo dated 06.01.2015 alleging that the petitioner had removed excess quantity.

3. Heard the learned Government Pleader as well.

4. After considering the nature of submission, this Court finds that if at all any excess quantity is removed, it is open for the first respondent to conduct a spot verification and to collect such other materials to ascertain the factual position. In the said circumstances, the second respondent is directed to conduct necessary verification with notice to the petitioner. Petitioner shall be permitted to remove ordinary earth covered by Ext. P3 permit, also by granting sufficient extension of time, if appropriate. On the other hand, if there is excess removal, appropriate action shall be taken for violation of the permit/condition in accordance with the relevant provisions of law. It will be open for the petitioner to seek for compounding the offence, if any such offence is established, in accordance with law.

Petitioner shall produce a copy of this judgment along with copy of the writ petition before the second respondent for further steps.

Sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

kmd