

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

WP(C).No. 4605 of 2014 (A)

PETITIONER(S):

**REV. MAMMEN SAMUEL, AGED 61 YEARS,
S/O.LATE C.M.SAMUEL, CHEMPAKATHINAL, NARANGANAM P.O.,
KOZHENCHERY.**

BY ADV. SMT.INDU SUSAN JACOB

RESPONDENT(S):

- 1. DISTRICT COLLECTOR,
PATHANAMTHITTA - 689 645.**
- 2. NARANGANAM GRAMA PANCHAYATH,
NARANGANAM - 689 642., REP. BY ITS SECRETARY.**
- 3. MINING & GEOLOGIST,
DISTRICT OFFICE, DEPARTMENT OF MINING & GEOLOGY,
PATHANAMTHITTA - 689 645.**
- 4. KERALA STATE POLLUTION CONTROL BOARD,
(REP. BY ITS MEMBER SECRETARY), THIRUVANANTHAPURAM,
KERALA - 695 001.**

**R1 & 3 BY GOVERNMENT PLEADER SRI.PADMALAYAN
R2 BY ADV. SRI.NIDHI BALACHANDRAN
R4 BY ADV. SRI.M.R.ARUNKUMAR, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:** A TRUE COPY OF THE RECEIPT OF LAND TAX DATED 15/7/13 FOR THE PERIOD 2013-2014 WITH REGARD TO PETITIONERS ABOVE PROPERTY
- EXT.P2:** A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 15/7/13 ISSUED TO THE PETITIONER.
- EXT.P3:** A TRUE COPY OF THE LETTER ISSUED BY JITTO SAM JACOB, A REGISTERED ARCHITECT.
- EXT.P4:** A TRUE COPY OF THE BUILDING PLAN FOR PETITIONER'S HOUSE,
- EXT.P5:** A TRUE COPY OF THE RECEIPT OF THE APPLICATION MADE BY PETITIONER TO 2ND RESPONDENT SEEKING PERMISSION TO REMOVE GRANTE ROCKS
- EXT.P6:** A TRUE COPY OF THE QUARRY PERMIT ISSUED BY 3RD RESPONDENT VALID UP TO 10/12/2013.
- EXT.P7:** A TRUE COPY OF CONSENT DATED NIL GIVEN BY PETITIONER'S NEIGHBORS
- EXT.P8:** A TRUE COPY OF THE STOP MEMO DATED NIL ISSUED BY THE 2ND RESPONDENT PANCHAYATH
- EXT.P9:** A TRUE COPY OF THE A LETTER DATED 20/11/2013 FROM THE 2ND RESPONDENT PANCHAYATH DIRECTING PETITIONER TO GET CONSENT FROM POLLUTION CONTROL BOARD FOR REMOVING GRANITE FORM PETITIONER PROPERTY.

RESPONDENT(S)' EXHIBITS

- EXT.R2(A):** A TRUE COPY OF THE COMMUNICATION ISSUED FROM SENIOR GEOLOGIST WITH THE DISTRICT COLLECTOR, PATHANAMTHITTA DATED 1/10/13
- EXT.R4(1):** COPY OF THE LETTER RECEIVED BY THE R4 FROM THE NARANGANAM GRAMA PANCHAYATH R2 DATED 10/10/13
- EXT.R4(2):** COPY OF THE REPLY TO EXT.R4(1) ISSUED BY THE R4 TO THE R2 DATED 5/11/13
- EXT.R4(3):** COPY OF THE CIRCULAR OF THE R4 BOARD DATED 18/10/06
- EXT.R4(4):** COPY OF THE CIRCULAR OF THE R4 BOARD DATED 13/6/2007
- EXT.R4(5):** COPY OF THE CIRCULAR OF THE R4 BOARD DATED 20/7/11.

/ TRUE COPY /

ANU SIVARAMAN, J.

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W.P.(C).No.4605 of 2014

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Dated this the 23rd day of September, 2015

JUDGMENT

The prayer in this writ petition is for a direction to the 2nd respondent to grant no-objection certificate to the petitioner for removal of granite rocks from 10 cents of land in Sy.No.95/1 in Block No.15 in Naranganam Village of Kozhencherry Taluk for construction of his house. The petitioner submits that in view of the provisions of Rule 106 of the Kerala Minor Mineral Concession Rules, 2015 the petitioner is entitled to exemption from obtaining quarrying permit or lease for extraction of granite rocks since such extraction is inevitable for construction of residential house in the property. The petitioner also states that the extraction is being conducted in the petitioner's property having extent of 16.8 Ares and consent is being withheld only on the ground that the Pollution Control Board had raised an objection that quarrying operations cannot be permitted within 100ms from the residential buildings, public buildings, places of worship etc.

2. It is submitted by the learned counsel appearing for the 4th respondent that there is restriction on sound levels generated while extraction is carried out as well. It is stated that the public road in front of the petitioner's property is within a distance of 13ms from the petitioner's property and therefore no quarrying lease can be granted. It is clear from a reading of Rule 106 of the Kerala Minor Mineral Concession Rules, 2015 that where construction of a minor mineral is as a part of the work for construction of residential building, the person doing such work can be exempted from obtaining quarrying permit/lease. Rule 106 of the Kerala Minor Mineral Concession Rules, 2015 reads as follows:-

“106. Extraction of minerals for special purposes.-- (1) In any case or class of cases such as construction of common facilities or residential building where extraction of minor mineral is inevitable as a part of the work, the person doing such work may be exempted from obtaining quarrying permit/lease under these rules:

Provided that before extraction of minor minerals, the person concerned shall intimate the competent authority his intention to carry out the works to be performed and shall furnish necessary documents as required by the competent authority in this regard. If the extracted mineral is to be transported outside the worksite, the competent authority may issue special mineral transit passes after collecting the royalty.”

3. In the above circumstances, the contention raised by the respondents 2 and 4 to the effect that the distance of 100ms is to be maintained from the public road in front of the petitioner's property may not hold good in the facts and circumstances of the instant case. On the production of necessary documents and on submission of the application before the authorised officer, the petitioner is entitled to be granted permission for carrying out the necessary excavation of rocks in 10 cents of property for construction of residential building without reference to the distance limit from the public road as provided in the circulars. This is more so, since exemption from possession of quarrying lease/licence is contemplated for residential purposes under the Rules.

In the above circumstances, the writ petition is disposed of directing the 2nd respondent to consider the petitioner's request for no-objection certificate as sought by the petitioner for removal of granite rock from 10 cents of property for construction of a residential house. In case the blasting

operation, as found necessary, carried out in the property creates any sound or other pollution, the 4th respondent will be free to take action, in accordance with law.

Anu Sivaraman, Judge

sj