

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 3RD DAY OF JUNE 2015/13TH JYAISHTA, 1937

WP(C).No. 9697 of 2015 (J)

PETITIONER(S):

1. KRISHNANKUTTY, AGED 60 YEARS,
S/O.KRISHNAN NAMBI, MIDHILA HOUSE, VELUTHOOR P.O,
VELUTHOOR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER MR.RAJENDRA VARMA
S/O.RAJARAJAVARMA, SURABHI, 10/17A,
KARUTHETHIL HOUSE, VELUTHUR P.O, THRISSUR TALUK,
THRISSUR DISTRICT.
2. MADHURI VARMA,
W/O.KRISHNANKUTTY, MIDHILA HOUSE, VELUTHOOR P.O,
VELUTHOOR VILLAGE, THRISSUR TALUK, THRISSUR DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER MR.RAJENDRA VARMA
S/O.RAJARAJAVARMA, SURABHI, 10/17A,
KARUTHETHIL HOUSE, VELUTHUR P.O, THRISSUR TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

1. THE SENIOR GEOLOGIST, THRISSUR
DEPARTMENT OF MINING AND GEOLOGY
THRISSUR DISTRICT. 680 001.
2. THE DIRECTOR
MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM 695 001.
3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIAL DEPARTMENT, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 03-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. COPY OF THE BUILDING PERMIT DATED 23.1.12 ISSUED FROM THE CORPORATION OF THRISSUR TO THE PETITIONERS.**
- EXHIBIT P2. COPY OF THE REVISED BUILDING PERMIT DATED 9.2.15 ISSUED BY THE THRISSUR CORPORATION TO THE PETITIONERS.**
- EXHIBIT P3. COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS DATED 26.02.15 BEFORE THE FIRST RESPONDENT.**
- EXHIBIT P4. COPY OF THE PHOTOGRAPHS OF THE CONSTRUCTION SITE OF PETITIONER.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P(C). No.9697 of 2015

Dated this the 3rd day of June, 2015.

JUDGMENT

The petitioners have approached this Court seeking a direction to the 1st respondent to issue sufficient O(A) forms to the petitioners for transporting earth already removed by him without insisting for Environmental Clearance Certificate from the Kerala State Environmental Impact Assessment Authority and No-Objection Certificate from the District Collector. The petitioners also seek for compounding the offence under the Kerala Minor Mineral Concession Rules, 1967 (for brevity Rules, 1967).

2. Obviously, the writ petition has been filed on the ground that the petitioners had removed ordinary earth and carried on the quarrying operation in the property, as per Ext.P1 building permit. Subsequently, the petitioners sought for revision in area; enhancing it from 1438.30m³ as seen in Ext.P1 to 14,388.10m³, as sanctioned in Ext.P2. The petitioners' contention is that the petitioners had removed the earth in pursuance to Ext.P1 and hence the petitioners may be permitted to transport the same

without the requirements as has been brought in by the Kerala Minor Mineral Concession Rules, 2015 (for brevity, Rules of 2015).

3. Admittedly, ordinary earth was included as a minor mineral by notification GO(P) No.138/12/D dated 17.11.2012 in the Kerala Minor Mineral Concession Rules, 1967. When the said Rules of 1967 was in force and before the said notification quarrying could have been conducted of ordinary earth without any permission and it could also have been transported without any sanction from the authorities under the Mines and Minerals (Development and Regulation) Act, 1957, is the argument.

4. At the outset, it has to be noticed that the petitioners contend that they carried on quarrying of ordinary earth in pursuance to Ext.P1; subsequent to the date shown in Ext.P1, but before the date 17.11.2012, when ordinary earth was brought under the purview of the Rules, 1967. But for the petitioners' assertion there is nothing on record to prove that such quarrying operations were carried on after Exts.P1 and before the notification referred to earlier. There is absolutely no explanation as to why the ordinary earth was kept in the premises itself from

2012 till date. The petitioners have also produced photographs at Ext.P4 indicating that the construction work has been commenced for the building as indicated in Ext.P2 building permit. The excavation made and the foundation laid, as is disclosed from the photographs is not one for a building of area specified in Ext.P1. Even the photographs would indicate that the construction sought to be carried on is of a larger extent, presumably of 14388.10 sq. meters, as sanctioned in Ext.P2.

5. There is absolutely no evidence to substantiate the contention that quarrying of ordinary earth was carried on pursuant to Ext.P1, that too in the year 2012. This Court is not inclined to grant the prayer sought for, for transport of the ordinary earth alleged to be kept in the site of the petitioners from 2012. More so since the petitioner even now does not have a case that he has approached the authorities for an Environmental Clearance Certificate or for a quarrying permit; as is now required under the Rules of 2015, brought into force on 07.02.2015.

6. Obviously, after obtaining the building permit dated 09.02.2015, the petitioners have not approached the authorities

under the Rules of 2015, which was brought into force on 07.02.2015. The petitioners have to apply for a quarrying permit after obtaining the Environmental Impact Assessment Certificate. The present attempt of the petitioners is to style the construction going on in the premises to be that prior to "ordinary earth" having been brought under the Rules, 1967 and also long prior to the issuance of Ext.P2 building permit. This Court is unable to accept the said contentions for the reasons stated above. The first respondent shall inspect the site and verify as to whether any sanction or Certificate as provided under the Rules of 2015 has been obtained by the petitioners, since the building permit is seen to have been issued on 09.02.2015 after the Rules of 2015 came into force. The first respondent shall also initiate appropriate proceedings under the Rules and if at all the petitioners apply for compounding, it can only be under Rules of 2015.

The writ petition would stand dismissed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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