

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

W.P.(C).No.12998 of 2015 (Y)

PETITIONER(S):-

BINU P. VARGHESE, AGED 35 YEARS, S/O.VARGHESE,
POONATTU, PAZHAMTHOTAM P.O.,
PAZHAMTHOTTAM VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):-

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ERNAKULAM DISTRICT-682030.
 2. THE DIRECTOR,
MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM-695001.
 3. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.
- R1 to R3 BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

WP(C).No.12998 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT-P1: TRUE COPY OF THE BUILDING PERMIT 4.4.2015 ISSUED BY THE SECRETARY, KUNNATHUNADU GRAMA PANCHAYATH.

EXHIBIT-P2: TRUE COPY OF THE REPORT SUBMITTED BY THE ASSISTANT ENGINEER, LSGD SECTION, KUNNATHUNADU GRAMA PANCHAYATH WITHOUT DATE.

EXHIBIT-P3: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 6.4.2015.

EXHIBIT-P4: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 9.4.2015 IN W.P.(C) NO.11995/2015.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.12998 of 2015-Y

Dated this the 21st day of May, 2015

JUDGMENT

The case of the petitioner is that, on the strength of Ext.P1 building permit, the petitioner levelled the property by removing ordinary earth for construction of a residential building. But when the petitioner approached the first respondent/District Geologist with a request for issuance of Mineral Transit pass to transport the earth from his property, it was refused to be acted upon.

2. Heard the learned Government Pleader as well.

3. By virtue of Rule 14 of the Kerala Minor Mineral Concession Rules, 2015 the persons doing construction of residential building including flats or commercial buildings having a plinth area upto 300 square metres are exempted from obtaining quarrying permit under the Rules, if the owner of the land has obtained a prior valid permit for construction of such building from the concerned Local Self Government authority. The said Rule

reads as follows:

“14. Quarrying permit for Ordinary earth: (1)

A quarrying permit under these rules shall be obtained for extraction of ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways or buildings in Form N:

(2) Notwithstanding anything contained in sub-rule (1), no quarrying permit is required under these rules for extraction of ordinary earth in connection with the construction of residential buildings including flats or commercial buildings having a plinth area of 300 square metres if the owner of the land obtained a prior valid permit for construction of such building from the Local Self Government authorities concerned;

Provided that in cases where transportation of ordinary earth is required, the owner shall pay royalty for the quantity to be transported and shall obtain mineral transit passes under the Kerala State Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015 from the competent authority;

Provided further that the competent authority shall not issue mineral transit passes for removal of ordinary earth exceeding the quantity needed to be extracted, as ascertained by it through a site inspection.”

4. In the above facts and circumstances, first respondent/District Geologist is directed to issue 'Mineral Transit Pass' in Form O(A) of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 [for brevity "Prevention Act"], on being satisfied with the genuineness of the claim of the petitioner based on Exhibit P1 building permit, without insisting for 'NOC'/Mining permit; in accordance with law, which shall be done at the earliest at any rate within two weeks from the date of receipt of a copy of this judgment, if necessary after a site inspection. The petitioner shall produce a copy of this judgment along with a copy of the writ petition before the first respondent/District Geologist for further steps.

The writ petition is disposed of.

Sd/-

K.Vinod Chandran
Judge.

vku/-

[true copy]