

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

WP(C).No. 13242 of 2015 (E)

PETITIONER:

**JOY VARGHESE, S/O.VARGHESE AGED 48 YEARS,
PULIKUZHAYIL HOUSE, ARAKUNNAM P.O,
EDAKKATUVAYAL VILLAGE, KANAYANNUR TALUK,
ERNAKULAM DISTRICT.**

BY ADV. SRI.S.SHAJAHAN (ADOOR)

RESPONDENT(S):

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ERNAKULAM DISTRICT - 686 562.**
- 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,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 13242 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1 - TRUE COPY OF THE BUILDING PERMIT OF THE SAID PROPERTY OF
THE PETITIONER ISSUED BY THE SECRETARY, EDAKKATUVAYAL
DATED 22-8-2014.

EXT.P2 - TRUE COPY OF THE SAID G.O(P)NO.93/2014/ID DATED 30-06-2014.

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

K. VINOD CHANDRAN, J.

W.P.(C) No. 13242 of 2015 (E)

Dated this the 29th day of May, 2015

J U D G M E N T

The petitioner's grievance is the non-issuance of a permit in Form "P" for removing the ordinary sand as per the Kerala Minor Mineral Concession Rules, 1967. However, at this point of time the Kerala Minor Mineral Concession Rules, 2015 has come into force. The case of the petitioner is that, on the strength of ExtP1 building permit, the petitioner levelled the property by removing ordinary earth for construction of a residential building. But when the petitioner approached the 1st respondent/District Geologist with a request for issuance of a pass in Form P of the Rules of 1967 to transport the earth from their 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, the 1st respondent/District Geologist is directed to consider issuance of '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, if

necessary after physical inspection of the site, which shall be done at the earliest at any rate within two weeks from the date of receipt of a copy of this judgment. The petitioner shall produce a copy of this judgment along with a copy of the writ petition before the 1st respondent/District Geologist and make an application under the Prevention Act for further steps.

The writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE