

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.14427 of 2015 (C)

PETITIONER(S):-

ANATHARAJ, AGED 52 YEARS, S/O.KRISHNANKUTTY,
THOPPIL HOUSE, ERATTUPUZHA,
KADAPPURAM VILLAGE, PALANGAD P O, CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):-

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, THRISSUR DISTRICT - 680001.
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 GOVERNMENT PLEADER SMT.C.K.SHERIN.

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

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXT.P1:- TRUE COPY OF THE NO OBJECTION CERTIFICATE 20-11-2013
ISSUED BY THE SECRETARY, KADAPPURAM GRAMA PANCHAYATH.
- EXT.P2:- TRUE COPY OF THE BUILDING PLAN OF THE RESIDENTIAL
BUILDING.
- EXT.P3:- TRUE COPY OF THE CERTIFICATE ISSUE BY KADAPPURAM
GRAMA PANCHAYATH DTD 23/4/2015.
- EXT.P4:- TRUE PHOTORAPHS OF THE ORDINARY SAND STORED BY
THE PETITIONER IN THE PREMISES.
- EXT.P5:- TRUE COPY OF THE APPLICAITON SUBMITTED BY THE
PETITIONER BEFORE THE FIRST RESPONDENT DTD. 28/4/2015.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.14427 of 2015-C

Dated this the 21st day of May, 2015

JUDGMENT

The petitioner in the above writ petition is aggrieved with the non-consideration of Exhibit P5 application filed under the Kerala Minor Mineral Concession Rules, 2015 [for brevity “Minor Mineral Rules of 2015”] and the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation] Rules, 2015 [for brevity “Prevention Rules of 2015”].

2. The facts leading to Exhibit P5 application are that the petitioner, owner of a property comprised in Survey No.4/3B of Kadappuram Village, coming within the Kadappuram Grama Panchayat, intended to construct a residential building in the said property. The petitioner approached the Local Self Government Institution, being the Kadappuram Grama Panchayat, and obtained a No Objection Certificate dated 20.11.2013, evidenced at Exhibit P1. Though the said certificate was issued for the purpose of obtaining a loan from a Nationalised Bank, the petitioner contends that no building permit is required for

construction of a residential building within the jurisdiction of a Grade II Panchayath.

3. The petitioner had commenced the construction activity and had also extracted ordinary sand from the land. “Ordinary sand” is a “minor mineral” as indicated in the Schedule to the Minor Mineral Rules of 2015. The petitioner was also issued with Exhibit P3 on 23.04.2014 by the Local Self Government Institution permitting removal of sand from the property for carrying on the construction of the residential building.

4. “Ordinary sand” being a “minor mineral”, quarrying permit had to be obtained under Section 4 of the Kerala Minor Mineral Concession Rules, 1967 [for brevity “Minor Mineral Rules of 1967”]. Obviously the petitioner has not applied for such a mining permit as per the Minor Mineral Rules of 1967. The petitioner, however, has subsequently carried on extraction of sand from the property of the petitioner as per Exhibit P3 and has now claimed for an exemption under the Minor Mineral Rules of 2015 and issuance of a transportation pass under the Prevention Rules of 2015.

5. The claim of exemption of the petitioner is under Rule 106 of the Minor Mineral Rules of 2015, which speaks of extraction of minerals for specific purposes, *inter alia*, construction of residential buildings, wherein, before extraction of minor minerals, the person concerned has to intimate the competent authority of the intention to carry out such work and on his satisfying the royalty as determined under the Rules.

6. The petitioner expresses his inability to have made such a prior intimation, to the competent authority, since no officer has been notified as the competent authority under the Rules of 2015. However, it is the admitted case that the 1st respondent, the District Geologist, was the notified officer as per the earlier Rules, who was competent to determine the royalty and issue transport passes as per the Minor Mineral Rules of 1967 under Form P.

7. The learned Government Pleader, on instructions, submits that a permit is insisted by the 1st respondent only since the Government had brought out a Government Order by which transport of ordinary earth was permitted for residential buildings even without a permit and the National Green Tribunal had

stayed that Government Order.

8. To understand the situation, a brief statement of the background facts is necessary. The Hon'ble Supreme Court had considered the issue of mining permits issued and the impact it had on the environment in ***Deepak Kumar and Others v. State of Hayana & Others*** [(2012) 4 SCC 629]. Certain guidelines were issued, which were declared to be operative till the respective States framed Rules under the Mines and Minerals (Development and Regulation) Act, 1957. It was in pursuance of such directions that a government order was issued by the Environmental Department of the State, which had been stayed by the National Green Tribunal. It is in view of such stay order that the Department of Geology had been insisting for permits even for quarrying minor minerals for carrying out residential constructions.

9. What is relevant is, the bringing into force of the Minor Mineral Rules of 2015 on 07.02.2015. In the context of the above Rules having come into force, the quarrying of sand for residential purposes, as is the case in the present writ petition, is exempted under Rule 106 of the Minor Mineral Rules of 2015.

But, however, a person intending to carry on such construction activity has to inform the competent authority under the Rules as to the construction to be carried on in the land and also satisfy the royalty as determined under the Rules. There is an obvious stalemate as of now, since the Competent Authority under the Minor Mineral Rules of 2015 has not been notified by the State. In such circumstance, prejudice would be caused to the individuals who intend to carry on such quarrying operations, since no officer is designated; to whom prior intention of quarrying can be given. Prejudice is also caused to the State, insofar as no machinery is available for determination of the royalty as per the Rules.

10. Considering the entire circumstances as also the fact that the Rules were introduced only on 07.02.2015, this Court would direct the 1st respondent, Geologist, who was the notified officer as per the Minor Mineral Rules of 1967, to conduct a site inspection and fix royalty; on satisfaction of which the petitioner shall be granted exemption under the Minor Mineral Rules of 2015. The transit pass in Form O(A) under the Prevention Rules of 2015 shall be issued, if a separate

application is made to that effect. It is also made clear that since exemption is available to the petitioner herein, there can be no insistence for a clearance certificate from the State Environmental Impact Assessment Authority (Kerala).

The writ petition is disposed of as above.

In the circumstance of the Government having not notified a "Competent Authority", the learned Government Pleader is directed to transmit a copy of this judgment to the officer concerned in the Government, so as to expedite the Government to notify the "Competent Authority" under the Minor Mineral Rules of 2015.

Sd/-
K.Vinod Chandran
Judge.

vkul/-

[true copy]