

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

W.P.(C).No.15700 of 2015 (J)

PETITIONER(S):-

1. JOS K. FRANCIS, AGED 52 YEARS, S/O.LATE K.C.FRANCIS,
KUTTIKKADAN HOUSE, ARISTO ROAD, THRISSUR-680 005.
2. SIMON K.FRANCIS, S/O.LATE K.C.FRANCIS, KUTTIKKADAN HOUSE,
THOTTATHIL LANE, THRISSUR-680 005.

BY ADV. SRI.JOBI JOSE KONDODY.

RESPONDENT(S):-

THE GEOLOGIST,
MINING AND GEOLOGY DISTRICT OFFICE,
MINI CIVIL STATION,
CHEMBOOKKAVU (PO),THRISSUR-680 620.

BY SENIOR GOVERNMENT PLEADER SRI.BIJU MEENATTOOR.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 : A TRUE COPY OF THE BUILDING PERMIT DATD 15-10-2014 ISSUED BY THE THRISSUR CORPORATION TO THE PETITIONERS.
- EXT.P2 : A TRUE COPY OF THE JUDGMENT DATED 8-12-2014 PASSED BY THE LEARNED SINGLE JUDGMENT OF THIS HONOURABLE COURT IN WPC.NO.31050 OF 2014.
- EXT.P3 : A TRUE COPY OF THE JUDGMENT DATED 5-2-2015 PASSED BY THE DIVISION BENCH OF THIS HONOURABLE COURT IN WA.NO.235 OF 2015.
- EXT.P4 : A TRUE COPY OF THE PROCEEDINGS DATED 7-11-2014 OF THE RESPONDENT HEREIN.
- EXT.P5 : A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS BEFORE THE RESPONDENT DATED 4-5-2015.
- EXT.P6 : A TRUE COPY OF THE ORDER DATED 5-5-2015 ISSUED BY THE RESPONDENT TO THE PETITIONERS.
- EXT.P7 : A TRUE COPY OF THE QUARRYING LEASE DATED 18-01-2012 EXECUTED BETWEEN THE STATE GOVERNMENT THROUGH THE RESPONDENT HEREIN AND THE FIRST PETITIONER.
- EXT.P8 : A TRUE COPY OF THE QUARRYING PERMIT DATED 17-5-2014 VALID UPTO 9-2-2015 ISSUED BY THE RESPONDENT TO THE FIRST PETITIONER.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.15700 of 2015-J

Dated this the 10th day of June, 2015

JUDGMENT

The petitioners own a quarry and had sought for permit for transport of overburden, being ordinary earth, from the quarry premises for filling up a residential plot where construction is going on. The petitioners were allowed to remove 400 M³ of ordinary earth, by exhibit P4 order dated 07.11.2014 as per the then existing Kerala Minor Mineral Concession Rules, 1967 [for brevity “Minor Mineral Rules of 1967”].

2. Subsequently, on the Kerala Minor Mineral Concession Rules, 2015 [for brevity “Minor Mineral Rules of 2015”] being brought into force as on 07.02.2015, Rule 15 interdicts any overburden in a quarry from being carried out of the quarry and mandates that the same should be stacked at the property away from the quarry area and shall be used for backfilling the pits in future. The petitioners need another 250 M³ ordinary earth to fill the land in which the residential

building is under construction. When the Geologist was approached, he refused to grant the permission by virtue of Rule 15.

3. The learned counsel appearing for the petitioners would in fact take this Court to Rule 15 of the Rules of 2015, to contend that the prohibition is only as regards the overburden obtained in quarrying carried on with licence under the Rules of 2015 and not ordinary earth which is extracted prior to the bringing into force of the Rules. Rule 15 reads as under:

“15. Removal of overburden by a quarrying permit holder.-- A person who has obtained quarrying permit under these rules for extraction of minerals other than ordinary earth may extract overburden from the area under the permit without obtaining a quarrying permit for extraction of the same where such extraction is inevitable for the extraction of mineral under the permit:

Provided that in such cases the permit holder shall stack the overburden at a safer distance away from the quarrying area and the overburden so stacked shall be used for backfilling the pits in future”.

4. The proviso to Rule 15 indicates that the overburden should be stacked in the very same property for backfilling the pits. However, as has been pointed out by the learned counsel, such prohibition is only with respect to any quarrying activity carried on under a permit issued under the Rules of 2015. In such circumstances, this Court directed the respondent to inspect the quarry of the petitioners and file a report before this Court, by order dated 02.06.2015. It was also directed that the respondent shall indicate as to whether any material is available with the office of the respondent to indicate that there was more overburden stacked in the premises than that has been transported.

5. The learned Government Pleader on instruction submits that, as on 27.12.2014 when the inspection was carried out last in the quarry, there was 300 M³ ordinary earth stacked in the area before the Rules of 2015 came into force. In such circumstance, the petitioner shall be allowed to remove 250 M³ of ordinary earth from the quarry premises and the respondent shall issue Form O(A) Pass under the Kerala

Minerals (Prevention of Illegal Mining, Storage and Transportation] Rules, 2015 in accordance with law, within a period of one week from the date of production of a certified copy of this judgment.

The writ petition is disposed of as above. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]