IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

WP(C).No. 18466 of 2015 (G)

PETITIONER(S) :

ALIKUNJU O.T., AGED 47 YEARS,
S/O.THAMPY BAVA, ONODIPOTHIYIL, WEST VENGOLA P.O.,
ARAKKAPADY VILLAGE, KUNNATHUNADU TALUK,
ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

---

1. **THE DISTRICT GEOLOGIST,**
   DEPARTMENT OF MINING AND GEOLOGY,
   ERNAKULAM DISTRICT- 682 030.

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,
   INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM- 695 001.

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Msd.

WP(C).No. 18466 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: **TRUE COPY OF THE BUILDING PERMIT 15/05/2015 ISSUED BY THE SECRETARY, VENGOLA GRAMA PANCHAYATH.**

EXT.P2: **TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE SECRETARY, VENGOLA GRAMA PANCHAYATH DATED 30/05/2015.**

EXT.P3: **TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 20/05/2015.**

EXT.P4: **TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED 26/05/2015 IN W.P.(C).NO.15459/2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.(C) No. 18466 of 2015 (G)

Dated this the 24th day of June, 2015

J U D G M E N T

The petitioner owns a property of around 1 acre in which he intends to construct a residential building of 114.66 sq. metres, the permit of which is produced at Ext.P1. The petitioner is exempted from obtaining a quarrying permit by virtue of Rule 14 of the Kerala Minor Mineral Concession Rules, 2015 (for brevity the 'Rules'). However, he has to obtain O(A) Forms under the Rules for transportation of the excavated earth.

3. By virtue of Rule 14 of the Rules 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, 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"], without insisting for 'NOC'/Mining permit; however, the same shall be only on satisfaction of the genuineness of the claim of the petitioner based on the building permit issued by the Local Self Government Institution. The respondents shall inspect the property and determine the amount of earth to be extracted and then the petitioner shall extract the earth after which a further inspection shall be conducted and passes shall be issued. It is made clear that the mining passes shall be issued only after the ordinary earth to be transported is stacked in the property which has to be

physically inspected by the Geologist. The Geologist shall also issue as many number of passes as there are vehicles required for transporting the heaped quantity of ordinary earth after ensuring that the entire details required in form O(A) is filled up by the petitioner. The petitioner shall also be liable to surrender the passes after the transport is effected. It goes without saying that the destination to which the ordinary earth is to be taken has to be specified in the passes, before it is issued by the respondent. The above exercise shall be done immediately on the petitioner approaching the Geologist.

Writ petition is disposed of.

Sd/-
K.VINOD CHANDRAN,
JUDGE

jjj