

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WP(C).No. 18754 of 2015 (T)

PETITIONERS:

1. KUNHALAN,S/O. MUHAMMED HAJI,
KARUTHEATH PARAKKATT, POOKKOTTUR P.O.,
MALAPPURAM DISTRICT, PIN-673617.
2. M.KUNHIMUHAMMED, S/O. HAMSA,AGED 62 YEARS,
PALLIYALIL HOUSE, POOKKOTTUR P.O.,
VELLUR-VIA, MALAPPURAM DISTRICT, PIN-673617.

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.N.SHAMSUL HUDA**

RESPONDENTS:

1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF INDUSTRIES,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
2. DIRECTOR,
DIRECTORATE OF MINING AND GEOLOGY,
KESAVADASAPURAM, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM-695004.
3. GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT,
DISTRICT OFFICE, MINI CIVIL STATION,
MANJERI P.O., MALAPPURAM DISTRICT, PIN-676121.

BY SENIOR GOVERNMENT PLEADER SRI.T.P.SAJID

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS:

- EXHIBIT P1- TRUE COPY OF THE QUARRYING PERMIT NO. AKCOA-MPM-02/2014 DATED 31-10-2014 ISSUED BY THE 1ST PETITIONER IN FAVOUR OF THE 2ND PETITIONER.
- EXHIBIT P2- TRUE COPY OF THE LETTER DATED 31-10-2014 OF THE 1ST PETITIONER ADDRESSED TO THE 3RD RESPONDENT.
- EXHIBIT P3- TRUE COPY OF THE CONSENT TO OPERATE DATED 5-7-2012 ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD IN FAVOUR OF THE 2ND PETITIONER, VALID UP TO 30-6-2015.
- EXHIBIT P4- TRUE COPY OF THE LICENSE OF POSSESSING THE EXPLOSIVES AND FOR MAINTAINING MAGAZINE DATED 2-5-2012, ISSUED BY THE CONTROLLER OF EXPLOSIVES, ERNAKULAM, IN FAVOUR OF THE 2ND PETITIONER, VALID UP TO 31-3-2017.
- EXHIBIT P5- TRUE COPY OF THE LICENSE TO POSSES THE EXPLOSIVES DATED 17-4-2012 ISSUED BY THE JOINT CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, CHENNAI, IN FAVOUR OF THE 2ND PETITIONER.
- EXHIBIT P7- TRUE COPY OF THE MEMORANDUM DATED 21-5-2012 ISSUED BY THE DIRECTOR OF MINES SAFETY, BELLARY REGION OF KARNATAKA STATE.
- EXHIBIT P8- TRUE COPY OF THE APPLICATION DATED 16-4-2015 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

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A. MUHAMED MUSTAQUE, J.

W.P.(C).No. 18754 of 2015

Dated this the 22nd day of December, 2015

JUDGMENT

The petitioners approached this Court seeking a direction to the 3rd respondent to issue Mineral Transit Passes based on O(A) Form for transporting the granite rubbles, blasted by the 2nd petitioner and stored in the property of the 1st petitioner on the strength of Ext.P1 quarrying permit.

2. In the counter affidavit, it is stated in Para 9 as follows:

“It is submitted that the 3rd respondent to issue mineral transit passes to a quarry, the quarry operator must remit royalty of the mineral to be transported. He must possess statutory licence from Pollution Control Board, Controller of Explosives and Secretary of Concerned Grama Panchayat in addition to the quarrying permit issued as per Kerala Minor Mineral Concession Rules,

2015. In Thressiamma Jacob v. Department of Mining and Geology case, the Honourable Supreme Court of India, upheld the mineral right of the land owner in private property in the Malabar region of Kerala State. So far the Hon'ble Court has not taken final decision regarding the royalty of the mineral in such land. The Hon'ble Court has not restrained the State Government from recovering the royalty of the mineral in such land."

2. The 2nd petitioner submits that he has a consent from the Kerala Pollution Control Board by Ext.P3 and Ext.P4 is the Explosive licence. Therefore, it is further submitted that the question of payment of royalty is being considered by the Hon'ble Supreme Court and till a decision is taken. The 2nd petitioner is prepared to furnish a Bank Guarantee in lieu of payment of Bank Guarantee.

3. This Court is of the view that if the 3rd respondent is satisfied that the 2nd petitioner has necessary consent and explosive licence, necessary O.A. Forms shall be issued to the petitioners on condition that the petitioners remit royalty. However, if the Hon'ble Supreme Court uphold the

right of the land owner, certainly the royalty paid by the petitioners shall be refunded to the petitioners within a period of three months from such decision of the Hon'ble Supreme Court. Needful shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

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