

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 23RD DAY OF JUNE 2015/2ND ASHADHA, 1937

WP(C).No. 18840 of 2015 (D)

PETITIONER :

**BABU C.K.,
S/O.KUNCHU, AGED 48 YEARS
CHERUVAZHATHOTTAM, KALLAR, VITTAYAR P.O.,
ANAVIRATTY VILLAGE, DEVIKULANGARA TALUK
IDUKKI DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
IDUKKI DISTRICT - 685 561.**
- 2. THE DIRECTOR
MINING AND GEOLOGY,
OFFICE OF THE MINING AND GEOLOGY
KESAVADASAPURAM, PATTAM,
THIRUVANANTHAPURAM - 695 001.**
- 3. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**

R1 TO R3 BY GOVT. PLEADER SRI. BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 23-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 18840 of 2015 (D)

APPENDIX

PETITIONERS' EXHIBITS :

- EXHIBIT P1. COPY OF THE TAX RECEIPT ISSUED BY THE SECRETARY,
MANNANKANDAM VILLAGE DATED 2.2.15.**
- EXHIBIT P2. COPY OF THE POSSESSION CERTIFICATE DATED 4.3.15 ISSUED BY
THE SECRETARY, MANNANKANDAM VILLAGE.**
- EXHIBIT P3. COPY OF THE BUILDING PERMIT DATED 6.6.15 ISSUED BY THE
ADIMALY GRAMA PANCHAYATH.**
- EXHIBIT P4. COPY OF THE SAID COMMUNICATION DATED 13.6.15 SUBMITTED BY
THE PETITIONER BEFORE THE 1ST RESPONDENT.**
- EXHIBIT P5. COPY OF THE JUDGMENT DATED 21.5.15 IN WP(C) NO. 14427/15 ON
THE FILE OF THE HONOURABLE COURT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.

W.P.(C) No. 18840 of 2015 (D)

Dated this the 23rd day of June, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that the petitioner is unable to remove weathered rock and rock for the construction of the building, which is permitted by Ext.P3 issued by the Local Self Government Institution. The petitioner approached the Geologist, the 1st respondent herein, with Ext.P4 intimation, as is provided in Rule 106 of the Kerala Minor Mineral Concession Rules, 2015, as intimation of the quarrying operation for residential purpose and for issuance of O(A) Form. The 1st respondent however, refused to accept the same on the ground that no Officer has been notified as per the new Rules of 2015.

2. This Court had considered a similar case in Ext.P5; paragraphs 9 and 10 of which are extracted herein.

“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 circumstance 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.”

3. Hence, following the above precedent, the respondent is directed to accept Ext.P4 and then inspect the property to verify the quantity that would have to be removed from the property. Subsequent to such inspection, the petitioner would be permitted to extract the weathered rock and stack it in the property itself, for determination of royalty.

4. 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.”

5. 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 respondent 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