

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 18841 of 2015 (E)

PETITIONER(S) :

1. **M.C.MATHEW, S/O.CHACKO, AGED 53 YEARS,
MULLAPPALLIL HOUSE, KUNCHATHANNY.P.O.,
KUNCHATHANNY VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.**
2. **JACOB MATHEW,S/O CHACKO, AGED 51 YEARS,
MULLAPPALLIL HOUSE, KUNCHATHANNY.P.O.,
KUNCHATHANNY VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.**
3. **SAJU CHACKO,S/O.CHACKO, AGED 44 YEARS,
MULLAPPALLIL HOUSE, KUNCHATHANNY.P.O.,
KUNCHATHANNY VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.**

BY ADV. SRI.P.M.ZRAJ

RESPONDENTS:

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. **THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.**

BY GOVERNMENT PLEADER SMT. C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 18841 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1 TRUE COPY OF THE TAX RECEIPT ISSUED BY THE
SECRETARY, MANNAMKANDAM VILLAGE DATED 4.3.2015 TO THE FIRST
PETITIONER**

**EXT.P2 TRUE COPY OF THE TAX RECEIPT ISSUED BY THE
SECRETARY, MANNAMKANDAM VILLAGE DATED 4.3.2015 TO THE SECOND
PETITIONER**

**EXT.P3 TRUE COPY OF THE TAX RECEIPT ISSUED BY THE
SECRETARY, MANNAMKANDAM VILLAGE DATED 4.3.2015 TO THE THIRD
RESPONDENT**

**EXT.P4 TRUE COPY OF THE BUILDING PERMIT DATED 6.6.2015 ISSUED BY THE
ADIMALY GRAMA PANCHAYATH**

**EXT.P5 TRUE COPY OF THE COMMUNICATION DATED 08.06.2015 SUBMITTED BY
THE PETITIONERS BEFORE THE FIRST RESPONDENT**

**EXT.P6 TRUE COPY OF THE JUDGMENT DATED 21.5.2015 IN WP(C).NO.14427/2015
ON THE FILE OF THIS HONOURABLE COURT.**

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

K. Vinod Chandran, J

W.P.(C).No.18841 of 2015-E

Dated this the 05th day of August, 2015

JUDGMENT

The petitioners are aggrieved with the fact that the petitioners are unable to remove weathered rock and rock for the construction of the building, which is permitted by Exhibit P4 issued by the Local Self Government Institution. The petitioners approached the Geologist, the 1st respondent herein, with Exhibit P5 intimation, as is provided in Rule 106 of the Kerala Minor Mineral Concession Rules, 2015 [for brevity “Minor Mineral Rules of 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 Exhibit P6 and issued appropriate directions. Following the above precedent, the respondent is directed to accept Exhibit P5 and then inspect the property to verify the quantity that would have to be removed from the property. Subsequent to such inspection, the petitioners would be permitted to extract the weathered rock and rock; and stack it in the property itself, for determination of royalty.

3. The petitioners express their 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.

4. 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 weathered rock

and rock was permitted for residential buildings even without a permit and the National Green Tribunal had stayed that Government Order.

5. 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.

6. 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 weathered rock and rock 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.

7. 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 petitioners shall be granted exemption under the Minor Mineral Rules of 2015. The 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 petitioners based on the building permit issued by the Local Self Government Institution. The 1st respondent shall inspect the property and determine the amount of weathered rock and rock extracted and then the passes shall be issued. It is made clear that the mining passes shall be issued only after the weathered rock and rock 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 weathered rock and rock after ensuring

that the entire details required in form O(A) are filled up by the petitioner. The petitioners shall also be liable to surrender the passes after the transport is effected. It goes without saying that the destination to which the weathered rock and rock are 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 petitioners approaching the Geologist. It is also made clear that since exemption is available to the petitioners 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.

Sd/-

K.Vinod Chandran
Judge.

vk/-

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4. In the above facts and circumstances,