

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937

WP(C).No. 20566 of 2015 (U)

PETITIONER :

**CLEATUS A., AGED 45 YEARS,
S/O. ALFRED, CLEVIN HOUSE, KOTTAPPURAM,
MULAVANA P.O., KOLLAM DISTRICT, 691 001**

BY ADV. SRI.VINOY VARGHESE KALLUMOOTTILL

RESPONDENTS :

- 1. TAHSILDAR, TALUK OFFICE, KOTTARAKKARA
TALUK, KOLLAM 691001**
- 2. VILLAGE OFFICER, EZHUKONE VILLAGE,
KOLLAM - 691001**
- 3. GEOLOGIST
MINING AND GEOLOGY DEPARTMENT,
DISTRICT OFFICE, KOLLAM 691001**
- 4. DIRECTOR
ENVIRONMENT AND CLIMATE CHANGE,
ENVIRONMENT DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM 695001**
- 5. EZHUKONE GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY
OFFICE OF THE EZHUKONE GRAMA PANCHAYATHM, EZHUKONE
KOLLAM DISTRICT 691001**

R1 TO R3 BY SENIOR GOVERNMENT PLEADER SRI. BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF THE SALE DEED NO. 1550/2013 OF PROPERTY.
- EXHIBIT P2: TRUE COPY OF THE PERMIT ALONG WITH THE PLAN APPROVED BY THE PANCHAYATH.
- EXHIBIT P3: TRUE COPY OF THE LOCATION SKETCH OF THE PROPERTY.
- EXHIBIT P4: TRUE COPY OF PHOTOGRAPHS OF THE PROPERTY PURCHASED BY THE PETITIONER.
- EXHIBIT P5: TRUE COPY OF THE LETTER ISSUED BY THE THAHASILDAR KARUNAGAPPALLY TO THE GEOLOGIST, KOLLAM ALONG WITH LOCATION SKETCH OF THE PROPERTY.
- EXHIBIT P6: TRUE COPY OF THE APPLICATION SUBMITTED BEFORE THE GEOLOGIST, KOLLAM

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

K. VINOD CHANDRAN, J

W.P(C) No. 20566 of 2015

Dated this the 14th day of July, 2015

J U D G M E N T

The petitioner intends to construct a building in the property in which there is an existing building. The petitioner has intimated the senior Geologist about the demolition of the old building and a construction to be made. Ext.P2 building permit indicate that the construction to be carried on is of a residential building having an area of 206.90 Sq.meters. But when the petitioner approached the 3rd respondent/Geologist with a request for issuance of Mineral Transit pass to transport the earth from his property, it was refused to be acted upon.

2. Heard the learned Government Pleader as well.

3. 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.”

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. 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 period expires. 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, at any rate, within a period of two weeks from the date of such application being filed.

Writ petition is disposed of.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge