

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 21599 of 2015 (Y)

PETITIONER :

**MYTHEEN
S/O.ABDUL RAHMAN, AGED 63 YEARS
PIRAMBILLIKKODY HOUSE
ARAKKAPADY VILLAGE, VENGOLA P.O.
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 - 695001.**
- 3. THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.**

R1 TO R3 BY GOVT. PLEADER SSMT.C.K. SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 17-07-2015, ALONG WITH WP(C) NO. 21619/2015 & CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1. TRUE COPY OF THE BUILDING PERMIT DATED 11.3.2015 ISSUED BY THE SECRETARY, VENGOLA GRAMA PANCHAYATH TO THE PETITIONER.
- EXT.P2. TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 26.3.2015.
- EXT.P3. TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN RESPECT OF THE WRIT PETITION SUBMITTED BY THE PETITIONER DATED 10.04.2015 IN WPC NO.12218/2015.
- EXT.P4. TRUE COPY OF THE ORDER DATED 2.5.2015 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.
- EXT.P5. TRUE COPY OF THE G.O.NO.12/14/ENV.T.DATED 15.11.2014.
- EXT.P6. TRUE COPY OF THE G.O.NO.02/14/ENV.T.DATED 21.02.2014.
- EXT.P7. TRUE COPY OF THE INTERIM ORDER OF HONOURABLE NATIONAL GREEN TRIBUNAL DATED 31.3.2015 IN APPLICATION NO. 67/2015.
- EXT.P8. TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 21.5.2015 IN WPC.NO.14427/2015.
- EXT.P9. TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 12.6.2015 IN WPC NO.17323/2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.

W.P(C). No.21599, 21619, 21627 & 21638 of 2015

Dated this the 17th day of July, 2015.

JUDGMENT

In all the above writ petitions, the respective petitioners intend construction of a residential house, the permit of which are produced as Ext.P1 in all the writ petitions. The respective petitioners are aggrieved with the order passed by the Senior Geologist at Ext.P4 (in all writ petitions) wherein a permit has been directed to be produced as directed by the National Green Tribunal. A similar issue was considered by this Court in WP(C) No.14427 of 2015 dated 21.05.2015 in the following manner:

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

8. 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 Haryana & 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.

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."

2. Considering the entire circumstances as also the fact that the Rules were introduced only on 07.02.2015, as in the aforecited case, this Court would set aside Ext.P4 in all the writ petitions and 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 exempted under the Minor Mineral Rules of 2015. The transit pass in Form O(A) under the Prevention Rules of 2015 shall be issued, if a separate application is made to that effect. It is also made clear that since exemption is available to the petitioner herein, there can be no insistence for an environmental clearance certificate from the State Environmental Impact Assessment Authority (Kerala).

3. 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**

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