

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

WEDNESDAY, THE 29TH DAY OF JULY 2015/7TH SRAVANA, 1937

WP(C).No. 22826 of 2015 (C)

FULL NAME AND ADDRESS OF THE PETITIONER(S) :

**BIJU VARGHESE, AGED 47 YEARS,
S/O.VARGHESE, KIZHAKKEKARAYIL HOUSE, PIRAVOM KARA,
PIRAVOM VILLAGE, MUVATTUPUZHA TALUK, PIRAVOM P.O- 686 664,
ERNAKULAM DISTRICT.**

**BY ADVS.SRI.P.G.MANU (MAMMALASSERY)
SMT.G.MAHESWARY
SRI.JOBIN PAUL
SRI.R.RAHUL
SMT.SANDHYA R.NAIR**

FULL NAME AND ADDRESS OF THE RESPONDENT(S) :

- 1. GEOLOGIST, DEPARTMENT OF MINING AND GEOLOGY,
KAKKANAD CIVIL STATION, ERNAKULAM DISTRICT- 682 030.**
- 2. THE DISTRICT COLLECTOR,
COLLECTORATE, KAKKANADU, ERNAKULAM DISTRICT- 682 030.**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE SALE DEED NO.1010/1/2011 DATED 16.05.2011
OF SRO PIRAVOM.**

**EXHIBIT P2: TRUE COPY OF THE ORDER DATED 18.06.2014 OF
THIS HONOURABLE COURT IN W.P.(C).NO.15505 OF 2014.**

**EXHIBIT P3: TRUE COPY OF THE BUILDING PERMIT NO.A2/103/2014 ISSUED BY
PIRAVOM GRAMA PANCHAYATH IN FAVOUR OF THE PETITIONER.**

**EXHIBIT P4: TRUE COPY OF THE LEAVE AND LICENSE AGREEMENT
DATED 04.11.2013 BETWEEN THE PETITIONER AND ONE
BALU PAUL (OWNER OF HOUSE NO.09/12 PAZHOOR EAST,
PIRAVOM GRAMA PANCHAYATH).**

**EXHIBIT P5: TRUE COPY OF THE APPLICATION PREFERRED BY
THE PETITIONER BEFORE THE 1ST RESPONDENT
DATED 17.07.2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

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W.P.(C) No.22826 of 2015 - C

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Dated this the 29th day of July, 2015

J U D G M E N T

The petitioner owns a property having an extent of 24 cents (09.72 ares) in Sy. NO.538/1A in Priavam Village, Muvattupuzha Taluk, Ernakulam District. The said property is covered with stones (granite) and rocks. As the petitioner proceeded to construct a house as per the permissions obtained from the Panchayat and while the petitioner was removing the stones from his property, the Sub Inspector of Police, seized the vehicles. The petitioner is exempted from obtaining a quarrying permit under the Mines and Mineral (Regulations and Development) Act, 1957 and Rule 14 of the Kerala Minor Mineral Concession Rules, 2015 (for brevity the 'Rules'). However, he has to obtain O(A) Forms under the Rules for transportation of the excavated granite stone.

3. By virtue of Rule 14 of the Rules 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."

4. 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 respondents shall inspect the property and determine the amount of granite stones to be extracted and then the petitioner shall extract the granite stones 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 granite stones to be transported are 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 granite stones 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 granite stone 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**

SB

// true copy //

P.A to Judge.