

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

W.P.(C).No.23671 of 2015 (H)

PETITIONER(S):-

MOYINKUTTY, AGED 58 YEARS, S/O. MUHAMMED KUTTYHAJI,
ERANHIKKAL, MAMBAD P.O., PULLIPPADAM VILLAGE,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ.

RESPONDENT(S):-

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
MALAPPURAM DISTRICT-676542.
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 - 695 001.

R1 TO R3 BY GOVERNMENT PLEADER SMT.C.K.SHERINE.

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.23671 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXHIBIT P1- TRUE COPY OF JUDGMENT DATED 10-4-2015 IN
WPC NO. 12079/2015 OF THIS HONOURABLE COURT.

EXHIBIT P2- TRUE COPY OF THE ORDER ISSUED BY THE FIRST
RESPONDENT DATED 8-5-2015 TO THE PETITIONER.

EXHIBIT P3- TRUE PHOTOGRAPHS OF THE EARTH STACKED BY THE
PETITIONER IN HIS PROPERTY.

EXHIBIT P4- TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 21-5-2015 IN WPC NO. 14427/2015.

RESPONDENT(S)' EXHIBITS:-

NIL.

Vku/

[true copy]

K. Vinod Chandran, J

W.P.(C).No.23671 of 2015-E

Dated this the 05th day of August, 2015

JUDGMENT

The petitioner is aggrieved with the fact that despite Exhibit P1 judgment, the petitioner is not permitted to remove the ordinary earth stacked in the plot. The petitioner was before this Court seeking removal of ordinary earth for the purpose of construction of residential house. This Court by Exhibit P1 judgment, noticing Rule 14 of the Kerala Minor Mineral Concession Rules, 2015 [for brevity “Minor Mineral Rules”], found that exemption is applicable to the petitioner's case, since the petitioner seeks to construct a residential building having less than 300 square metres. However, the petitioner was not allowed to transport the ordinary earth, by Exhibit P2. The finding in Exhibit P2 was that on inspection it was found that the mineral extracted was “clay” and not “ordinary earth”.

2. The learned Government Pleader also supports Exhibit P2 on the ground that Rule 4(2)(f) requires a No Objection Certificate from the District Collector for extraction of ordinary clay or ordinary sand.

3. However, it is to be noticed that Rule 106 of the Minor Mineral Rules specifically provide for an exemption. In any case or class of cases, such as construction of common facilities or residential building where extraction of minor mineral is inevitable as a part of the work, such person is exempted from obtaining a quarrying permit. In the present case, the ordinary clay is extracted from the property where residential building is to be constructed. Exhibit P2 order has been passed without looking into the Rules which granted exemption for any minor mineral as per Rule 106 of the Minor Mineral Rules.

4. In the above circumstances, Exhibit P2 is set aside. 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 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.

vku/-

[true copy]