

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 24300 of 2015 (J)

PETITIONER(S):

**ELIZABETH KURIAKOSE,
D/O.K.G. KURIAKOSE, AGED 54 YEARS,
PADINJAREKUTTU HOUSE, PARIPPU P.O.,
KOTTAYAM DISTRICT- 686 014.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA,
SRI.P.T.ABHILASH.**

RESPONDENT(S):

- 1. GOVERNMENT OF KERALA,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF INDUSTRIES,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM -695 001.**
- 2. GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT,
CIVIL STATION, KAKKANAD,
ERNAKULAM, KOCHI- 682 030.**
- 3. VILLAGE OFFICER,
ALUVA WEST VILLAGE, ALUVA,
ERNAKULAM DISTRICT- 683 101.**

BY SR. GOVT. PLEADER SRI.BIJU MEENATTOOR.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1. COPY OF THE LOCATION SKETCH OF THE PROPERTIES OF THE PETITIONER PREPARED BY THE 3RD RESPONDENT.
- EXHIBIT P2. COPY OF THE POSSESSION CERTIFICATE DATED 23.03.2015 ISSUED BY THE 3RD RESPONDENT.
- EXHIBIT P3. COPY OF THE BUILDING PERMIT NO.374/2015 DATED 13.07.2015 ISSUED BY THE SECRETARY TO EDATHALA GRAMA PANCHAYATH.
- EXHIBIT P4. COPY OF THE REPRESENTATION DATED 27.07.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXHIBIT P5. COPY OF THE JUDGMENT DATED 10.04.2015 IN WP(C).NO.12145/15 OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.

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Dated this the 11th day of August, 2015

J U D G M E N T

The petitioner owns a property of 5.67 Ares of property comprised in Re.Sy.No. 6/8 of Block No.36 of Aluva West Village of Aluva Taluk, to construct a residential building of 300.18 M², the permit of which is produced at Ext.P3. The petitioner is exempted from obtaining a quarrying permit by virtue of 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 earth.

2. 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."

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. The respondents shall inspect the property and determine the amount of earth to be extracted and then the petitioner shall extract the earth 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 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

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passes after the transport is effected. 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.

Writ petition is disposed of.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

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// true copy //

P.A to Judge.