

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 18TH DAY OF SEPTEMBER 2015/27TH BHADRA, 1937

WP(C).No. 28399 of 2015 (Y)

PETITIONER(S) :

**JOHNY, AGED 61 YEARS,
S/O.MATHAI, VADAKKEKKARAPUTHENPURAYIL AIKKARAKKUDY,
VENGOLA P.O., ARAKKAPADY VILLAGE, 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, OFFICER OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM- 695 001.**
- 3. THE STATE OF KERALA, REPRESENTED BY SECRETARY
TO GOVERNMENT, INDUSTRIES DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 28399 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE BUILDING PERMIT NO.A2-10897/14 ISSUED BY
THE SECRETARY, VENGOLA GRAMA PANCHAYATH.**

**EXHIBIT P2: TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY
SECRETARY, VENGOLA GRAMA PANCHAYATH DATED 07.09.2015.**

**EXHIBIT P3: TRUE COPY OF THE APPLICATION SUBMITTED BY
THE PETITIONER BEFORE THE FIRST RESPONDENT
DATED 08.09.2015.**

**EXHIBIT P4: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 10.09.2015 IN W.P.(C).NO.27299 OF 2015.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 28399 of 2015

Dated this the 18th day of September, 2015

J U D G M E N T

The case of the petitioner is that, on the strength of Ext.P1 Building Permit, the petitioner levelled the property by removing ordinary earth for construction of a residential building. But, when the petitioner approached the 1st 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 counsel for the petitioner and the learned Government Pleader.

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.”

4. In the above facts and circumstances, 1st respondent/District

Geologist is directed to issue 'Mineral Transit Pass' in Form (OA) of the Kerala Minerals (Prevention of Illegal Mining, Storage and Transportation) Rules, 2015 [for brevity "Prevention Act"], on being satisfied with the genuineness of the claim of the petitioner based on Ext.P1 Building permit, without insisting for 'NOC'/Mining permit; in accordance with law, which shall be done at the earliest at any rate within two weeks from the date of receipt of a copy of this judgment. The petitioner shall produce a copy of this judgment along with a copy of the writ petition before the first respondent/District Geologist for further steps. The first respondent need not insist the number of vehicle being deployed by the petitioner for transportation.

The writ petition is disposed of.

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO. 28399 of 2015

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