

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937

WP(C) .No. 28721 of 2015 (M)

PETITIONER(S) :

TOM SCARIA,
S/O.SCARIA AGED 55 YEARS,
KOVUKUNNAL HOUSE, AMAYANNOOR MURI,
AYARKUNNAM VILLAGE KOTTAYAM TALUK,
KOTTAYAM DISTRICT.

BY ADV. SRI.AJITH MURALI.

RESPONDENT(S) :

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1. THE STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM -695 001.
 2. THE DISTRICT COLLECTOR,
KOTTAYAM, KOTTAYAM DISTRICT-686 001.
 3. THE REVENUE DIVISIONAL OFFICER,
KOTTAYAM, KOTTAYAM DISTRICT-686 001.
 4. THE VILLAGE OFFICER,
AYARKUNNAM VILLAGE, KOTTAYAM DISTRICT-686 001.
 5. THE SECRETARY,
AYARKUNNAM GRAMA PANCHAYATH,
KOTTAYAM TALUK, KOTTAYAM DISTRICT-686 001.
 6. THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, KOTTAYAM DISTRICT-686 001.

BY GOVERNMENT PLEADER SMT.C.K.SHERIN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT. P1 - THE TRUE COPY OF THE PERMIT NO.A4-6555/2014 DATED 05.12.2014
ISSUED BY THE 5TH RESPONDENT, SECRETARY OF AYARKUNNAM GRAMA
PANCHAYATH.

EXT. P2 - THE TRUE COPY OF THE REPORT DATED 18.09.2015 SUBMITTED BY THE 4TH
RESPONDENT BEFORE THE TAHSILDAR, KOTTAYAM.

EXT. P3 - TRUE COPY OF THE LOCATION SKETCH.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 28721 of 2015

Dated this the 22nd 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 sixth respondent/Senior 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, 6th respondent/Senior

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 sixth respondent/Senior Geologist for further steps. The sixth respondent need not insist the number of vehicle being deployed by the petitioner for transportation.

The writ petition is disposed of as above.

sd/-

A.MUHAMED MUSTAQUE,
Judge

MBS/

WP(C).NO. 28721 of 2015

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