

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 30925 of 2015 (M)

PETITIONER(S):

**MUHAMMED, S/O.HAMZA, AGED 40 YEARS,
THEKKATH HOUSE, ANAPPARA,
VAZHIKKADAVU, MALAPPURAM DISTRICT.**

BY ADV. SRI.BABU S. NAIR.

RESPONDENT(S):

**THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
DISTRICT OFFICE, MANJERI,
MALAPPURAM DISTRICT, PIN- 676 121.**

BY GOVT. PLEADER SRI.BIJU MEENATTOOR.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 14-10-2015, ALONG WITH WP(C).NO.30956 OF 2015,THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

WP(C).No. 30925 of 2015 (M)

APPENDIX

PETITIONER'S EXHIBITS:-

**EXHIBIT-P1: TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE PETITIONER
AS NO.A3.8149/14 ISSUED BY THE VAZHIKKADAVU GRAMA
PANCHAYATH DATED 17.10.2015.**

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

W.P(C).Nos. 30925 & 30956 of 2015

Dated this the 14th October, 2015

JUDGMENT

The petitioners in these Writ Petitions, holders of building permits, want to fill up the basement of the proposed construction by ordinary earth. The petitioners seek issuance of Form O(A). The petitioners also submit that based on the building permit, they do not require mining permit for the purpose of filling. The petitioners refer to Rule 14 as well as Rule 106 of the Kerala Minor Mineral Concession Rules, 2015. Rule 14 provides 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."

By virtue of the above Rule, 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.

2. Rule 106 provides as follows:

“106. Extraction of minerals for special purposes.-- (1) 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, the person doing such work may be exempted from obtaining quarrying permit/lease under these rules:

Provided that before extraction of minor minerals the person concerned shall intimate the competent authority his intention to carry out the works to be performed and shall furnish necessary documents as required by the competent authority in this regard. If the extracted mineral is to be transported outside the worksite, the competent authority may issue special mineral transit passes after collecting the royalty.”

This Rule also provides extraction from the site covered by the building permit.

3. In this case, the petitioners are not seeking for any extraction from the site covered by the building permit. On the other hand, they seek for issuance of O(A) Form based on the building permits. If extraction is not involved based on the building permits, necessarily, the petitioners

can seek issuance of O(A) Form only in terms of the Kerala Minerals (Prevention of Illegal Mining, storage and transportation) Rules, 2015.

Therefore, this Court is of the view that if the petitioners satisfy the Geologist in terms of the Kerala Minerals (Prevention of Illegal Mining, storage and transportation) Rules, 2015, the petitioners' request shall be considered.

The Writ Petition is disposed of as above.

**A.MUHAMED MUSTAQUE
JUDGE**

vgs15/10/15