

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 32372 of 2015 (V)

PETITIONER :

**ABDUL RAZAK
S/O. ABDUL KHADER, AGED 54 YEARS
MAVIDICHAN, EDAKKATTUVAYAL
KANAYANNUR 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
OFFICE 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.**

R1 TO R3 BY GOVT. PLEADER SMT. C.K. SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 32372 of 2015 (V)

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE BUILDING PERMIT DATED 20.2.2015 ISSUED BY THE SECRETARY, EDAKKATTUVAYAL GRAMA PANCHAYATH.

EXT.P2 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 16.9.2015.

EXT.P3 COPY OF THE JUDGMENT OF THIS HONOURABLE COURT DATED 10.9.2015 IN WP(C) NO. 27299 OF 2015.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 32372 of 2015

Dated this the 26th day of October 2015

JUDGMENT

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.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

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