

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 32472 of 2015 (H)

PETITIONER :

**NOUSHAD,S/O.ABOOBACKER, AGED 37 YEARS,
ILLATHVALAPPIL HOUSE, NAGALASSERY VILLAGE,
PATTAMBI TALUK, PALAKKAD DISTRICT,
REPRESENTED BY POWER OF ATTORNEY HOLDER SIDDIQUE,
S/O.KUNJU, AGED 40 YEARS, PARAKKATTIL, NELLIKKATTIRI.P.O.,
THIRUMITTAKODE VILLAGE, PATTAMBI TALUK, PALAKKAD DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
PALAKKAD DISTRICT-649 533**
- 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**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.32472/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE BUILDING PERMIT DATED 18/9/2015 ISSUED BY THE SECRETARY, NAGALASSERY GRAMA PANCHAYATH.**
- P2 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 27/9/2015**
- 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

sts

A. MUHAMED MUSTAQUE, J

W.P(C) No. 32472 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

The case of the petitioner is that, on the strength of Ext.P1 building permit, the petitioner intends to construct a residential building for which purpose ordinary earth has to be removed from the property. But when the petitioner approached the **1st respondent-The District Geologist** with a request for issuance of Mineral Transit pass to transport the ordinary earth from his property, it was refused to be acted upon.

2. Heard the learned Government Pleader as well.

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-The 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. 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 District Geologist. **The District 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 passes after the period expires. 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 District Geologist**, at any rate, within a period of two weeks from the date of such application being filed.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE

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