

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

WP(C).No. 33775 of 2014 (V)

PETITIONER(S):

**MANI VARKEY,
S/O.VARKEY, RESIDING AT CHENNATTUKUDIYIL HOUSE,
IRUMPUPALAM - MEZHUKUMCHAL, VALARA P.O., IDUKKI.**

**BY ADVS.SRI.MATHEW A KUZHALANADAN
SMT.VINEETHA V.KUMAR**

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY,
MINING AND GEOLOGY DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.**
- 2. THE DISTRICT GEOLOGIST,
IDUKKI, DEPARTMENT OF MINING AND GEOLOGY,
DISTRICT OFFICE, IDUKKI, MINI CIVIL STATION,
THODUPUZHA, IDUKKI - 685 553.**
- 3. THE TAHSILDAR,
TALUK OFFICE, DEVIKULAM, IDUKKI - 685 553.**

BY GOVERNMENT PLEADER SRI.MANOJ P.KUNJACHAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE APPLICATION BEFORE THE 3RD RESPONDENT
TAHSILDAR, DEVIKULAM TALUK ON 17/09/2014.
- EXHIBIT P2:** TRUE COPY OF THE ENQUIRY REPORT SUBMITTED BY THE VILLAGE
OFFICER, MANNAMKANDAM DATED 27/09/2014.
- EXHIBIT P3:** TRUE COPY OF THE RECOMMENDATION LETTER DATED 01/10/2014
FORWARDED BY THE 3RD RESPONDENT TO THE SUB COLLECTOR,
IDUKKI.
- EXHIBIT P4:** TRUE COPY OF THE FORWARDING LETTER DATED 09/10/2014 BY THE
SUB COLLECTOR, IDUKKI TO THE 2ND RESPONDENT DISTRICT
GEOLOGIST, IDUKKI.
- EXHIBIT P5:** TRUE COPY OF THE REJECTION LETTER DATED 18/11/2014 BY THE
2ND RESPONDENT GEOLOGIST.
- EXHIBIT P6:** TRUE COPY OF THE DRAFT NOTIFICATION DATED 10/03/2014
PUBLISHED BY THE UNION GOVERNMENT OF INDIA.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P(C). No.33775 of 2014

Dated this the 16th day of July, 2015.

JUDGMENT

The petitioner is the owner of 47.57 Ares of agricultural land comprised in Survey No.218/10 and 218/2 of Mannamkandam Village, Devikulam Taluk, Idukki District. The petitioner, due to the shortage of water and considering the nature of the land, intends to dig a pond at the north-western side of the property. The petitioner made an application before the 3rd respondent Tahsildar, Devikulam Taluk on 17.09.2014, which is indicated at Ext.P1. The Village Officer inspected the property and by a report evidenced at Ext.P2, reported that the digging of the pond at the place indicated by the petitioner, would require blasting of boulders. The area evidently is a rocky one. The Tahsildar by Ext.P3, also recommended the permission for a pond.

2. The application was rejected by the Geologist, Idukki,

since the area, in which the quarrying application was carried on, was found to be an ecologically sensitive area. The petitioner contends that, by Ext.P6 and the sketch attached to that (which is not appended herein), the area in which the petitioner's property is situated has been excluded from the ecologically sensitive area. The petitioner only seeks reconsideration.

3. However, the learned Government Pleader submits that, as per Kerala Minor Mineral Concession Rules, 2015 [for brevity, the Rules of 2015], without an Environmental Clearance Certificate, no quarrying operation could be carried out in that area. It is also to be noticed that the petitioner seeks only digging of a pond for his own use, that too for agricultural purpose.

4. The learned counsel for the petitioner would take me through Rule 103 of the Rules of 2015 and would contend that the specific intention of the Government in providing for "case or class of cases", is to take in other similar purposes as the construction of the common facility or a residential building. However, this Court is not able to countenance such argument,

since specifically exemption for extraction of minerals for special purpose has been confined to "construction of common facilities" and "residential buildings" in a single case or a class of cases. A single case of a common facility or construction of a residential building or a class of cases, wherein such constructions are made are exempted. It cannot be read in that any similar facility also, would be taken under the exemption Clause.

5. The learned counsel would specifically refers to Rule 57 (2) of the earlier Minor Mineral Concession Rules, 1967, which took in quarrying for domestic or agricultural purposes also. Therein, under sub-rule (1) of Rule 57 quarrying for domestic or agricultural purposes were exempted and by sub-rule 2, quarrying for public purposes were also exempted. However, the exemption for agricultural purpose is not included in the present Rules of 2015. The same not having been included, this Court cannot supply any "causus omissus", since there is no anomaly in the Rules framed. But, however it is for the Government to look into whether such quarrying for agricultural purpose as in this case, raised by an agriculturist, can be incorporated in the

exemption clause. Till such incorporation, however, there could be no requirement for reconsideration for the petitioner's application. The Registry shall hence forward a copy of this judgment to the Principal Secretary, Industries Department.

The writ petition is closed with the above observations.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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