

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 12TH DAY OF NOVEMBER 2015/21ST KARTHIKA, 1937

WP(C).No. 34172 of 2015 (V)

PETITIONER:

**K.M.JOHN, S/O.MATHEW, AGED 40 YEARS,
KUZHIYARAKARA HOUSE, KUPPEKADU,
THIRUVANIYOOR VILLAGE, THIRUVANIYOOR P.O.,
KUNNATHUNADU TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.S.SHAJAHAN (ADOOR)

RESPONDENT(S):

- 1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
ERNAKULAM DISTRICT-682030.**
- 2. THE DIRECTOR, MINING AND GEOLOGY,
OFFICE OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM,
THIRUVANANTHAPURAM-695001.**
- 3. THE STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONERS' EXHIBITS:

- EXT. P1 : TRUE COPY OF THE APPROVED BUILDING PERMIT DATED 21.2.2015
ISSUED BY THE SECRETARY, THIRUVANIYOOR GRAMAPANCHAYATH.
- EXT. P2 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE FIRST RESPONDENT DATED 25.10.2015.
- EXT. P3 : TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 22.5.2015 IN WP(C)NO.13034/2015.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.34172 of 2015

Dated this the 12th day of November, 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/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/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 Geologist. The 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 Geologist, at any rate, within a period of two weeks from the date of such application being filed.

Writ petition is disposed of.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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