

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. 34174 of 2015 (V)

PETITIONERS :

1. VIJAYAKUMARAN, AGED 54 YEARS,
S/O. GOVINDAN NAIR, VELUTHEDATH HOUSE,
CHELAKKARA VILLAGE, THALAPPILLI TALUK,
THRISSUR DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER SHAIJAN,
S/O. JOSE, AGED 45 YEARS, PUTHENVEETIL
THOZHUPPADOM DESOM, PAINKULAM VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.
2. HARIDASAN, AGED 53 YEARS,
S/O. NARAYANAN EZHUTHASSAN, MOODACHIYIL,
VENCHANELLOR VILLAGE, THALAPPILLY TALUK,
THRISSUR DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER SHAIJAN,
S/O. JOSE, AGED 45 YEARS, PUTHENVEETIL
THOZHUPPADOM DESOM, PAINKULAM VILLAGE
THALAPPILLY TALUK, THRISSUR DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS :

1. THE DISTRICT GEOLOGIST
DEPARTMENT OF MINING AND GEOLOGY
THRISSUR DISTRICT-680 001.
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 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:**

bp

WP(C).No. 34174 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 : TRUE COPY OF THE BUILDING PERMIT DT 21-10-2015 ISSUED BY THE SECRETARY, CHELAKKARA GRAMA PANCHAYAT TO THE PETITIONERS.**
- P2 : TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT DT 24-10-2015.**
- P3 : TRUE COPY OF THE JUDGMENT DT 26-10-2015 IN WPC.NO.32370/2015 ON THE FILE OF THIS HONOURABLE COURT.**

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.34174 of 2015

Dated this the 12th day of November, 2015

JUDGMENT

The case of the petitioners is that, on the strength of Ext.P1 building permit, the petitioners intend to construct a residential building for which purpose ordinary earth has to be removed from the property. But when the petitioners approached the 1st respondent/District Geologist with a request for issuance of Mineral Transit pass to transport the ordinary earth from their 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"], 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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