

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

WP(C).No. 34412 of 2014 (B)

PETITIONER :

**JOHN JOSEPH, S/O JOSEPH,AGED 50 YEARS,
THEREZHATH, UDAYANAPURAM P.O,
VAIKOM TALUK, KOTTAYAM DISTRICT.**

**BY ADVS.SRI.P.M.ZIRAJ
SRI.A.M.ABDULLA
SRI.O.M.SAJAYAN
SRI.K.S.DHANESH KUMAR
SRI.K.S.SREENATH
SMT.RESHMA P JOSEPH
SMT.SUBI.K
SRI.P.MOHAMED SABAH**

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
DEPARTMENT OF MINING AND GEOLOGY,
KOTTAYAM DISTRICT -686 531**
- 2. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
KOTTAYAM DISTRICT -686 531**

R1 & R2 BY SR GOVERNMENT PLEADER SRI.K.C.VINCENT

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 34412 of 2014

Dated this the 8th day of January, 2015

JUDGMENT

The petitioner has approached this Court with the following prayers:

"1. Issue a writ of certiorari or any other appropriate writ, direction or order by calling for the records leading to the issuance of Ext.P5 order and set aside the same as illegal.

2. Issue a writ of certiorari or any other appropriate writ, order or direction, directing the first respondent to consider and dispose Ext.P4 application of petitioner for mining ordinary sand afresh after conducting a proper enquiry in the subject matter and after giving an opportunity to the petitioner for personal hearing.

3. Declare that the certificate from the Kerala State Environmental Impact Assessment Authority is not required for mining ordinary sand from the private property of petitioner."

2. The learned counsel for the petitioner submits that, the petitioner is the owner of the property having an extent of 129 Ares situated in Sy.No. 30/1, 31/1B, 31/A1 of Vadakkemuri Village and enjoying the same, also remitting tax as borne by Ext.P1 issued by the concerned Village Officer. Ext.P2 is the Possession Certificate and Ext.P3 is the site plan. The petitioner intends to carry out some sand mining in the property and accordingly Ext.P4 application was submitted before the 1st

respondent for granting NOC so as to enable him to approach the concerned Geologist for further steps. The said application was rejected as per Ext.P5 dated 14.12.2014 which in turn is under challenge in this writ petition.

3. Heard the learned counsel for the petitioner as well as the learned Government Pleader.

4. With reference to the materials on record, the learned counsel for the petitioner points out that, even as per Ext.P5, the 1st respondent points out that the distance between the property and canal is above 50 mtrs (51 mtrs) and NOC has been rejected stating that there was chance to have adverse impact with regard to environmental aspects. It is stated that, petitioner is ready to produce 'clearance certificate' before the concerned Village Officer and the present request is to have NOC in so far as the property is situated more than 50 mtrs from the Bank of the river/canal. The relevant provisions in this regard is Rule 29(i) of the Kerala Minor Mineral Concession Rules, 1967 which is extracted below:

“Rule 29(i) The lessee shall not carry on, or allow to be carried on any mining operations at any point within a distance of 75 metres from any railway line, except under and in accordance

with written permission of the railway administration or from any bridge on National Highway or 50 metres from any reservoir, tanks, canals, roads, bridges, other public works, residential buildings, the boundary walls of places of worship, burial grounds or burning ghats, except under and in accordance with the previous permission of the State Government or the competent authority. The railway administration or the State Government or the competent authority may in granting such permission impose such conditions as may be found necessary."

5. On going through the said Rule, it is seen that the mining activities cannot be conducted within 75 metres from railway line, except under and in accordance with written permission of the railway administration or from any bridge on National Highway or 50 metres from any reservoir, tanks, canals, roads, bridges, other public works, residential buildings, the boundary walls of places of worship, burial grounds or burning ghats, except under and in accordance with the previous permission of the State Government or the competent authority. The provision therein specifically make it clear that, no mining operation shall be carried on within 50 metres of any river bank except in the case of mining sand. This means sand mining stands exempted and is permissible to be done within 50 metres

from the river bank. The learned counsel for the petitioner also brought to the notice of this Court that, the permit has to be issued in the relevant form i.e., Form U which is in terms of Rule 3, 4(1A) of the Kerala Minor Mineral Concession Rules, 1967. Condition No.2 of the said Form clearly stipulates the course open which reads as follows:

"2. No Quarrying shall be done within 75 meters of the Railway line and bridges or 50 meters from State Highway, residential buildings and river banks. In the case of sand and ordinary clay the mining operation shall be carried out only 10 meters away from the river bank."

6. The said condition clearly shows that, even though mining of sand is permissible to be done within 50 mtrs from the river bank, there has to be a restriction in the activity by confining the same after leaving a gap of 10 mtrs from the river bank and such activity is possible only in the remaining extent. The learned counsel for the petitioner submits that the petitioner is ready to comply with the said condition as well.

7. In the above circumstance, the writ petition is disposed of, directing the 1st respondent to reconsider Ext.P4 application preferred by the petitioner for granting NOC. The proceedings as

above shall be finalized after hearing the petitioner at any rate, within 'six weeks' from the date of receipt of a copy of the judgment. It will be for the petitioner to produce the environmental clearance before the Geologist for obtaining the permit and if any such permit is granted the conditions and the relevant provisions of the law shall be strictly complied with while giving effect to the activity. Ext.P5 will stand set aside so as to facilitate such exercise.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the first respondent for further steps.

**P.R. RAMACHANDRA MENON,
JUDGE.**

kp/-