

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 34807 of 2015 (A)

PETITIONER(S):

**BIJU PAULOSE, AGED 45 YEARS,
S/O.PAULOSE, PATHAPARAMBIL HOUSE,
PULICAMALY P.O., MULANTHURUTHY VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

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 SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

WP(C).No. 34807 of 2015 (A)

APPENDIX

PETITIONER(S) EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE BUILDING PERMIT DATED 28/10/15 ISSUED BY
THE SECRETARY, MULANTHURUTHY GRAMA PANCHAYATH**

**EXHIBIT P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE R1 DATED 5/11/15**

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT
DATED 10/9/15 IN WPC.27299/15**

RESPONDENTS' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.34807 of 2015

Dated this the 18th 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”], 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 writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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