

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 19TH DAY OF NOVEMBER 2015/28TH KARTHIKA, 1937

WP(C).No. 34999 of 2015 (Y)

PETITIONER:

**K.I.YACOB, S/O.K.V. ISAHQUE,
KIZHAKKUMPARAYIL HOUSE,
NORTH MAZHUVANNOOR P.O, MUDAVOOR (VIA),
MUVATTUPUZHA- 686 669**

**BY ADVS.SRI.BIJU .C. ABRAHAM
SRI.P.P.RAJESH**

RESPONDENTS:

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT ,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001**
- 2. THE DIRECTOR, MINING AND GEOLOGY,
OFFICE OF THE DIRECTOR OF MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM-695 001**
- 3. THE GEOLOGIST,
MINING AND GEOLOGY, DISTRICT OFFICE, ERNAKULAM,
PIN-682 013**
- 4. MAZHUVANNOOR GRAMA PANCHAYAT,
OFFICE OF THE MAZHUVANNOOR GRAMA PANCHAYAT,
AIRAPURAM P.O, ERNAKULAM DISTRICT- 683 541
REPRESENTED BY SECRETARY.**
- 5. THE VILLAGE OFFICER,
AIRAPURAM VILLAGE, AIRAPURAM P.O.,
ERNAKULAM DISTRICT -683 541**

R1 TO R3,R5 BY GOVERNMENT PLEADER SMT. C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-11-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).No. 34999 of 2015 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

P1:- TRUE COPY OF THE POSSESSION CERTIFICATE DTD 3/2/2015

P1(A):- TRUE COPY OF THE TAX RECEIPT ISSUED BY THE 5TH RESPONDENT

**P1(B):- TRUE COPY OF THE LOCATION SKETCH ISSUED BY THE 5TH RESPONDENT
ON 13/4/2015**

**P2:- TRUE COPY OF THE BUILDING PERMIT DTD 9/4/2015 ISSUED BY THE 4TH
RESPONDENT**

P2(A):- TRUE COPY OF THE PLAN OF THE PROPOSED BUILDING

**P2(B):- TRUE COPY OF THE CERTIFICATE DTD 9/4/2015 ISSUED BY THE 4TH
RESPONDENT**

**P3:- TRUE COPY OF THE APPLICATION DTD 14/5/2015 SUBMITTED TO THE 3RD
RESPONDENT (EXCLUDING ANNEXURES)**

P4:- TRUE COPY OF THE AFFIDAVIT DTD 13/4/2015 SWORN BY THE PETITIONER

P4(A):- TRUE COPY OF THE AFFIDAVIT DTD 13/4/2015 SWORN BY THE PETITIONER

RESPONDENT(S)' EXHIBITS: **NIL**

/TRUE COPY/

P.A.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.34999 of 2015

Dated this the 19th day of November, 2015

JUDGMENT

The case of the petitioner is that, on the strength of Ext.P2 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 3rd respondent/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, 3rd respondent/ 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.P2 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 3rd respondent/ Geologist for further steps. The 3rd respondent need not insist the number of vehicle being deployed by the petitioner for transportation.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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