

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

WP(C).No. 35446 of 2015 (E)

PETITIONER(S):

**BALAN, AGED 50 YEARS, S/O.VELAYUDAN,
PATTANGATTIL VADAKKECHARUVIL,
AREEKARA MURI, MUALAKUZHA VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT.**

BY ADV. SRI.AJITH MURALI

RESPONDENT(S):

- 1. THE STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT COLLECTOR,
ALAPPUZHA DISTRICT - 688 001.**
- 3. THE REVENUE DIVISIONAL OFFICER,
ALAPPUZHA, CHENGANNUR TALUK,
ALAPPUZHA DISTRICT - 689 121.**
- 4. THE VILLAGE OFFICER, MULAKUZHA VILLAGE,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT - 689 121.**
- 5. THE SECRETARY, MULAKUZHA GRAMA PANCHAYATH,
CHENGANNUR TALUK, ALAPPUZHA DISTRICT - 689 121.**
- 6. THE SENIOR GEOLOGIST, DEPARTMENT OF MINING
AND GEOLOGY, ALAPPUZHA DISTRICT - 688 001.**

BY GOVERNMENT PLEADER SMT. C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
23-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 35446 of 2015 (E)

APPENDIX

PETITIONER(S)' EXHIBITS:

**EXT.P1: THE TRUE COPY OF THE BUILDING PERMIT NO.A4-5145/2015 ISSUED BY THE
5TH RESPONDENT; SECRETARY OF MULAKUZHA GRAMA PANCHAYATH.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.35446 of 2015

Dated this the 23rd 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 5th 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, 5th 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.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 5th respondent/ Geologist for further steps.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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