

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 37629 of 2015 (C)

PETITIONER :

**MAKKAR,S/O.MUHAMMED, AGED 55 YEARS,
MOOZHICKATHOTTATHIL HOUSE,
CHOVVARA THEKKUMBHAGOM VILLAGE,
SREEMOOLANAGARAM.P.O., ALUVA TALUK,
ERNAKULAM DISTRICT, REPRESENTED BY POWER OF ATTORNEY
HOLDER NAVAS, S/O. BAVA, AGED 42 YEARS, THARAYIL HOUSE,
SREEMOOLANAGARAM.P.O., ALUVA TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S):

- 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**

BY GOVERNMENT PLEADER SMT. C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

sts

WP(C).NO.37629/2015

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE BUILDING PERMIT DATED 10/9/2015 ISSUED BY THE SECRETARY, ANNAMANADA GRAMA PANCHAYATH TO THE PETITIONER.**
- P2 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 4/11/2015.**
- P3 COPY OF THE JUDGMENT DATED 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

sts

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 37629 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

The case of the petitioner is that, on the strength of Ext.P1 Building Permit, the petitioner levelled the property by removing ordinary earth for construction of a residential building. But, when the petitioner approached the 1st respondent–The District Geologist, with a request for issuance of Mineral Transit pass to transport the earth from his property, it was refused to be acted upon.

2. Heard the learned counsel for the petitioner and the learned Government Pleader.

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–The District Geologist is directed to issue 'Mineral Transit Pass' in Form (OA) 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–The 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