

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WP(C).No. 38803 of 2015 (A)

PETITIONER(S) :

1. **RAMANUNNI**
S/O. CHANDRAN NAIR, AGED 38 YEARS
KIZHAKETIL HOUSE, VADAKKETHARA VILLAGE
PAZHAYANNUR P.O., THALAPILLY TALUK
THRISSUR DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER
REJITH KUMAR, S/O. KRISHNAKUMAR
AGED 26 YEARS, AMAROTTUKALAM HOUSE
PAZHAYANNUR P.O., THALAPPILLY TALUK
THRISSUR DISTRICT.
2. **SAJITHA**
W/O. RAMANUNNI, AGED 35 YEARS
KIZHAKETIL HOUSE, VADAKKETHARA VILLAGE
PAZHAYANNUR P.O., THALAPILLY TALUK
THRISSUR DISTRICT
REPRESENTED BY POWER OF ATTORNEY HOLDER
REJITH KUMAR, S/O. KRISHNAKUMAR
AGED 26 YEARS, AMAROTTUKALAM HOUSE
PAZHAYANNUR P.O., THALAPPILLY TALUK
THRISSUR DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S) :

1. **THE DISTRICT GEOLOGIST**
DEPARTMENT OF MINING AND GEOLOGY
THRISSUR DISTRICT – 680 001.

...2/-

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.

R1 TO R3 BY GOVT. PLEADER SMT. C.K. SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Mn

...3/-

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 : COPY OF THE NO OBJECTION CERTIFICATE DATED 11.12.2015 ISSUED BY THE SECRETARY, PAZHAYANNUR GRAMA PANCHAYATH TO THE PETITIONERS.

EXT.P2 COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS BEFORE THE FIRST RESPONDENT DATED 16-12-2015.

EXT.P3 COPY OF THE JUDGMENT DATED 26.10.2015 IN WP(C) NO. 32370/2015 ON THE FILE OF THIS HONOURABLE COURT.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J.

W.P.(C).No.38803 of 2015

Dated this the 21st Day of December, 2015

JUDGMENT

The case of the petitioners is that, on the strength of Ext.P1 NOC, the petitioners intend to construct a residential building for which purpose ordinary earth has to be removed from the property. But when the petitioners approached the 1st respondent-The District Geologist with a request for issuance of Mineral Transit pass to transport the ordinary earth from their 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/
The 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"], without insisting for 'NOC'/Mining permit;
however, the same shall be only on satisfaction of the
genuineness of the claim of the petitioners based on the
building permit issued by the Local Self Government
Institution. It is made clear that the mining passes shall be
issued only after the ordinary earth to be transported is
stacked in the property which has to be physically inspected
by the Geologist. The Geologist shall also issue as many
number of passes as there are vehicles required for
transporting the heaped quantity of ordinary earth after
ensuring that the entire details required in form O(A) is filled
up by the petitioners. The petitioners shall also be liable to
surrender the passes after the period expires. It goes without
saying that the destination to which the ordinary earth is to be

taken has to be specified in the passes, before it is issued by the 1st respondent. The above exercise shall be done immediately on the petitioners approaching the Geologist, at any rate, within a period of two weeks from the date of such application being filed.

The first respondent need not insist the number of vehicle being deployed by the petitioners for transportation.

The writ petition is disposed of as above.

Sd/ -
A. MUHAMED MUSTAQUE
JUDGE

bpr