

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. 38871 of 2015 (H)

PETITIONER(S):

- 1. MOHANAN NAIR, S/O. KESHAVAN NAIR,
RESIDING AT PUTHENVEETIL AND PRATHIBHA VEETIL, 1,
NEDUMKUNNAM - 686 542.**
- 2. GEETHA, W/O.MOHANAN NAIR,
RESIDING AT PUTHENVEETIL AND PRATHIBHA VEETIL, 1,
NEDUMKUNNAM - 686 542.**

BY ADV. SRI.SURIN GEORGE IPE.

RESPONDENT(S):

- 1. THE DISTRICT COLLECTOR,
KOTTAYAM - 686 002.**
- 2. NEDUMKUNNAM GRAMA PANCHAYAT,
NEDUMKUNNAM - 686 542.**
- 3. THE DISTRICT GEOLOGIST,
OFFICE OF THE MINING AND GEOLOGY DEPARTMENT,
KOTTAYAM DISTRICT, KOTTAYAM - 686 002.**

R1 & 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:**

rs.

WP(C).No. 38871 of 2015 (H)

APPENDIX

PETITIONER'S EXHIBITS:-

- P1 - A TRUE COPY OF THE POSSESSION CERTIFICATE DATED 04.12.2014
SHOWING POSSESSION OF THE PROPERTY BY THE PETITIONERS.
- P2 - A TRUE COPY OF THE ORDER DATED 12.01.2015.
- P3 - TRUE COPY OF THE APPLICATION SEEKING OF REMOVE EARTH.
- P4 - TRUE COPY OF THE REPORT DATED 13.02.2015 OF THE VILLAGE OFFICER.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A. MUHAMED MUSTAQUE, J.

W.P.(C).No.38871 of 2015

Dated this the 21st Day of December, 2015

JUDGMENT

The case of the petitioners is that, on the strength of Ext.P2 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 3rd 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, 3rd 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 3rd 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