IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

FRIDAY, THE 22ND DAY OF MAY 2020 / 1ST JYAISHTA, 1942

WP(C).No.10181 OF 2020(W)

PETITIONER/S:

IQBAL, AGED 56 YEARS
S/O. MUHAMMED SALI, NILAMEL.P.O,
KOLLAM DISTRICT, PIN-691535.

BY ADV. SRI.S.ABHILASH

RESPONDENT/S:

1 **THE DISTRICT GEOLOGIST**
OFFICE OF MINING AND GEOLOGY, DISTRICT OFFICE,
KESAVADASAPURAM, PATTOM PALACE,
THIRUVANANTHAPURAM-695004.

2 **THE DISTRICT COLLECTOR,**
CIVIL STATION, THIRUVANANTHAPURAM-695043.

3 **THE VILLAGE OFFICER,**
PAZHAYAKUNNUMEL VILLAGE,KILIMANOOR.P.O,
THIRUVANANTHAPURAM DISTRICT,PIN-695601.

4 **PAZHAYAKUNNUMELK GRAMA PANCHAYAT,**
KILIMANOOR.P.O, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY,PIN-695601.

OTHER PRESENT:

SRI.K.J.MANU RAJ, GOVT.PLEADER FOR R-1 to R-3
SRI.K.SIJU KAMALASANAN, SC FOR R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS, J.

W.P(C).No.10181 Of 2020

Dated this the 22nd day of May, 2020.

J U D G M E N T

The case set up in this Writ Petition (Civil) is as follows:

The petitioner is aggrieved by the refusal on the part of the 1st respondent to issue transit pass/permit so as to transport piling waste and ordinary earth removed for the purpose of construction of foundation, stored in the property. The petitioner is progressing with construction of a commercial building as per Ext.P1 in Pazhayakunnumel Village in Thiruvananthapuram District. Now foundation and piling work are over. So as to construct the foundation and to erect the pile, certain amount of ordinary earth was removed and stored in the plot from the pit of foundation and the pile. The petitioner filed application along with documents before the 1st respondent for permission to transport the same out of the plot. The 1st respondent instead of granting permit by collecting royalty or by imposing penalty, directed the petitioner to apply for quarrying permit. There is no quarrying or excavation in

the property. There is no further removal of ordinary earth in the property since the foundation is already over. Moreover, the plot will not satisfy the condition for issuance of quarrying permit. There is no development of property and the same is in road level. The 1st respondent ought to have permitted the petitioner to transport the pile of waste and earth so as to facilitate the construction of the building. Hence aggrieved by Ext.P4, the writ petition is filed.

2. The prayers in this Writ Petition (Civil) are as follows:

> *"i. Call for records leading to Ext.P-4 and quash the same by issuing a writ of certiorari.*
> *ii. To issue a writ of mandamus commanding he 1st respondent to issue necessary transit pass/permit to transport the piled ordinary earth and piling waste from his property comprised in Sy.No.58/2-2, 57/7, 58/2-1, 58/12-1, 58/12-2, 58/12-3 and 58/12-4 in Block No.33 of Pazhayakunnumel Village wherein construction is in progress as per Ext.P1 building permit.*
> *iii. To issue such other writ order or direction, which is just and necessary in the facts and circumstances of the case."*

3. Heard Smt.Anjana Kannath, learned counsel for the petitioner, Sri.K.J.Manuraj, learned Government Pleader appearing for respondents 1 to 3 and Sri.Siju Kamalasanan, learned Standing Counsel appearing for the 4th respondent-Pazhayakunnumel Grama Panchayath.

4. According to the petitioner he had earlier secured Ext.P-1 building permit dated 17.1.2019 from the 4th respondent-

Grama Panchayath in accordance with the provisions contained in the Kerala Panchayath Building Rules for making construction of a commercial building having a total extent of 3061.99 sq.m. That in pursuance of Ext.P-1 building permit, the petitioner has now completed the foundation work, etc. That the petitioner was never aware about any requirement to formally obtain a quarry permit for conducting excavation of the soil for making the construction of the building in terms of the building permit. The petitioner was always under the bonafide belief that once a party has secured building permit from the competent local body concerned as per the statutory building rules, then excavation work for laying the foundation of the building is an incidental activity and that therefore, the petitioner was under the belief that no further permission is required. The petitioner now wants to remove the excavated soil from the construction site. Only now, the petitioner came to realise that by virtue of the provisions contained in Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015, quarrying permit for carrying out for excavation work for making construction of building having a plinth area exceeding 300 sq.m. would require the party to obtain a quarrying permit before

carrying out excavation work. Since the excavation work is already over, the petitioner has submitted Ext.P-3 application dated 3.3.2020 before the 1st respondent-District Geologist for formal permission to remove the excavated soil. That Ext.P-3 application has been rejected by the 1st respondent-District Geologist as per Ext.P-4 dated 5.3.2020 on the ground that the said request of the petitioner cannot be acceded to as it was mandatory on the part of the petitioner to obtain a quarrying permit for making construction exceeding 300 sq.m. in view of the mandatory provisions contained in Rule 14(2) of the Kerala Minor Mineral Concession Rules, 2015,. It is this decision at Ext.P-4 rendered by the 1st respondent-District Geologist that is essentially under challenge in this writ proceedings.

5. Ext.P-4 dated 5.3.2020 issued by the 1st respondent-District Geologist reads as follows:

"നമ്പർ 570 /ഡി.ഒ.റ്റി/എം എൽ /2020

മൈനിങ് & ജിയോളജി വകുപ്പ്,
ജില്ലാ ഓഫീസ്, തിരുവനന്തപുരം
കേശവദാസപുരം, പട്ടം പാലസ് പി.ഒ.
email-geo.thi.dmg@kerala.gov.in
Phone-0471 - 2442055
തീയതി -05/03/2020

ജിയോളജിസ്റ്റ്,
തിരുവനന്തപുരം.

ശ്രീ. ഇക്ബാൽ,
ഷാ മൻ സിൽ,
നിലമേൽ, കൊല്ലം - 691 535.

സർ,

വിഷയം - ഖനിയും ഖനിജങ്ങളും - സാധരണ മണ്ണ് - കെട്ടിട നിർമ്മാണത്തിന്റെ ഭാഗമായി സാധാരണ മണ്ണ് നീക്കം ചെയ്യുന്നത് - സംബന്ധിച്ച്-

സൂചന - (1) 2015 ലെ കേരള മൈനർ മിനറൽ കൺസഷൻ ചട്ടങ്ങൾ
(2) താങ്കളുടെ 03/03/2020 തീയതിയിലെ അപേക്ഷ.

മേൽ സൂചനകളിലേക്ക് ശ്രദ്ധ ക്ഷണിക്കുന്നു. കെട്ടിട നിർമ്മാണത്തിന്റെ ഭാഗമായി മണ്ണ് നീക്കുന്നതിന് സൂചന (2) പ്രകാരം ഈ ഓഫീസിൽ സമർപ്പിച്ച അപേക്ഷയും അനുബന്ധ രേഖകളും പരിശോധിച്ചതിൽ തദ്ദേശ സ്വയം ഭരണ സ്ഥാപനത്തിൽ നിന്നും അനുവദിച്ചിരിക്കുന്ന കെട്ടിട നിർമ്മാണ അനുമതിയിൽ നിർമ്മിക്കാനുദ്ദേശിക്കുന്ന കെട്ടിടത്തിന്റെ വിസ്തൃതി 300 ചതുരശ്ര മീറ്ററിൽ കൂടുതലാണെന്ന് കാണുന്നു. ടി. സാഹചര്യത്തിൽ സൂചന (1) ചട്ടങ്ങളിൽ ഇത്തരം സംഗതികളിൽ ഒരു പ്രത്യേക അനുമതി നൽകുവാൻ വ്യവസ്ഥ ഇല്ലാത്തതിനാൽ താങ്കൾ നിയമാനുസൃതം കാറിയിങ് പെർമിറ്റിനുള്ള അപേക്ഷ സമർപ്പിക്കേണ്ടതുണ്ട്. ടി. അപേക്ഷ ലഭിക്കുന്ന മുറയ്ക്ക് തുടർ നടപടികൾ സ്വീകരിക്കുന്നതാണ് എന്ന് അറിയിച്ചു കൊള്ളുന്നു.

വിശ്വസ്തതയോടെ

ജിയോളജിസ്റ്റ് "

Smt.Anjana Kannath, learned counsel for the petitioner would submit that the stand taken by the 1st respondent in Ext.P-4 is not correct and that this Court may remit the matter to the 1st respondent for consideration and decision afresh. Per contra, Sri.K.J.Manuraj, learned Government Pleader appearing for respondents 1 to 3 would submit that going by a reading of Ext.P-1 building permit, it can be seen that the construction sought to be affected by the petitioner is having a total extent of much more the threshold limit of 300 sq.m. as stipulated in Rule 14(2) of the

Kerala Minor Mineral Concession Rules, 2015. Therefore, it was mandatory on the part of a person like the petitioner to initially obtain quarrying permit for carrying out the excavation work for construction exceeding 300 sq.m. and only after clearing the formalities and obtaining quarrying permit could a party like the petitioner would proceed to go ahead with the excavation of the soil for the foundation work. Therefore, the learned Government Pleader would submit that the attempt of the petitioner is a circuitous device to justify the violation of law.

6. Smt.Anjana Kannath, learned counsel for the petitioner would then submit on the basis of instructions of her party that as mentioned hereinabove, the petitioner had carried out excavation of work only on the bonafide belief that the no further permission is required and that the petitioner will immediately file a detailed representation before the 1st respondent detailing out all the facts of the case and about Ext.P-1 building permit issued by the 4th respondent and the construction made and the approximate quantity of the soil already excavated for the foundation work. That the petitioner is prepared to pay any royalty, penalty or any other amount as prescribed by the Rules and he is also prepared

for compounding of the case, etc., and that the said pleas of the petitioner may be ordered to be considered by the 1st respondent. It is for the petitioner to work out his remedies in the manner known to law. In case the petitioner files such representation, it is for the 1st respondent to consider the same and examine the factual aspects and then to take a decision as to whether the matter could be duly closed on the petitioner paying requisite amount prescribed as per the Rules and whether the case could be compounded, etc., in terms of the provisions contained in the Rules. It is for the petitioner to file such fresh representation before the 1st respondent along with a certified copy of this judgment with a copy of the memorandum of the Writ Petition. This the petitioner may do within 10 days from the date of receipt of a certified copy of this judgment. Thereafter on receipt of such representation, the 1st respondent may ensure the conduct of inspection at the building site with due prior notice to the petitioner and copy of the inspection report should be given to the petitioner and thereafter the petitioner should be invited for personal hearing and he should be afforded reasonable opportunity of being heard either in person or through authorised

representative/counsel, if any, and then the 1st respondent should take a considered decision on the pleas made by the petitioner as noted hereinabove. However, it is ordered that the petitioner shall not remove the soil excavated from the construction site before the conduct of the site inspection. Further it is also ordered that the petitioner shall not conduct any further excavation in the site in pursuance of Ext.P-1 building permit without necessary permission from the District Geologist. In that regard, learned counsel for the petitioner would submit on the basis of instructions that the petitioner has already duly completed the excavation for the construction and there is no requirement for conducting any further excavation. The decision as above should be duly taken by the 1st respondent without much delay, preferably within a period of 6 weeks from the date from the date of receipt of fresh petition along with a certified copy of this judgment.

With these observations and directions, the above Writ Petition (Civil) will stand finally disposed of.

Sd/-
ALEXANDER THOMAS,
Judge.

bkn/-

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**TRUE COPY OF BUILDING PERMIT DT.17.1.2019 VIDE NO.A2-BA(7159)/2019.**
EXHIBIT P2	**TRUE COPY OF PHOTOGRAPH SHOWING THE BUILDING SITE OF THE PETITIONER.**
EXHIBIT P3	**TRUE COPY OF THE APPLICATION DT.03.03.2020**
EXHIBIT P4	**TRUE COPY OF COMMUNICATION DT.5.3.2020 ISSUED BY THE 1ST RESPONDENT VIDE NO.570/DOT/ML/2020.**