

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 4TH DAY OF APRIL 2018 / 14TH CHAITHRA, 1940

WP(C).No. 10931 of 2018

PETITIONER:

ELKO PROPERTIES AND DEVELOPERS PRIVATE LIMITED,
FORMERLY OFFICE AT C.C.41/349 B, SKYLINE HOUSE, RAJAJI ROAD,
ERNAKULAM VILLAGE, KANAYANNUR TALUK, ERNAKULAM DISTRICT
AND PRESENTLY AT SKYLINE HOUSE, NH BYPASS,
NEAR EMC HOSPITAL, VENNALA.P.O, ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGING DIRECTOR, K.V.ABDUL AZEEZ,
S/O.AHAMMED KOYA, AGED 63 YEARS.

BY ADV.SRI.P.M.ZIRAJ

RESPONDENT(S) :

1. THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR DISTRICT.
2. THE DIRECTOR,
MINING AND GEOLOGY, OFFICE OF THE MINING AND GEOLOGY,
KESAVADASAPURAM, PATTAM, THIRUVANANTHAPURAM-695 001.
3. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.

R1 TO R3 BY GOVERNMENT PLEADER SRI.MANURAJ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 04-04-2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts
6/4/2018

WP(C).No. 10931 of 2018 (N)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE BUILDING PERMIT DATED 31.3.2016
ISSUED BY THE SECRETARY, THRISSUR MUNICIPAL
CORPORATION

EXHIBIT P2 TRUE COPY OF THE APPLICATION DATED 31.1.2018
SUBMITTED BY THE PETITIONER BEFORE THE FIRST
RESPONDENT

EXHIBIT P3 TRUE COPY OF THE POSTAL RECEIPT DATED 26.03.2018

EXHIBIT P4 TRUE COPY OF THE ORDER DATED 8.3.2017 IN
W.A.NO.431/2017 OF THIS HONOURABLE COURT

EXHIBIT P5 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE
COURT DATED 20.12.2017 IN WP(C)NO.36018/2017

EXHIBIT P6 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE
COURT DATED 13.03.2018 IN W.P. (C)NO.8389 OF 2018.

RESPONDENT'S EXHIBITS:

NIL

/TRUE COPY/

P.A.TO JUDGE

sts
6/4/2018

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C) No.10931 of 2018

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Dated this the 4th day of April 2018

JUDGMENT

The petitioner has approached this Court aggrieved by the refusal on the part of the respondents to accept Ext.P2 application preferred by the petitioner for a quarrying permit, as also an application for issuance of transit passes, so as to extract ordinary earth. It is the case of the petitioner that the application is not being accepted by the respondents citing the necessity of an environmental clearance certificate for carrying on the aforesaid activities. It is pointed out that the petitioner has obtained Ext.P1 building permit from the Chiyaram Village, Thrissur Taluk, for the purposes of constructing a building, and in connection with the said construction, he has to remove earth from his land, which he then has to transport to a place outside his property. It is in this connection that he had approached the respondents for the issuance of necessary transit passes, and the said application was refused to be accepted, on the ground that the petitioner would require an environmental clearance certificate.

2. I have heard the learned counsel appearing for the

petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find from a perusal of the relevant notifications under the Environment Protection Act and Rules as also the provisions of the Kerala Minor Mineral Concession Rules, 2015, that, for the purposes of the instant writ petition, the activity of mining incidental to the construction of a building is regulated by two sets of laws; (i) under the Environment Protection Act and Rules and (ii) by the Mines and Minerals (Development and Regulation) Act and Rules. As per the notification dated 14.09.2006 of the Government of India, Ministry of Environment, Forest and Climate Change, any project involving the building and construction up to an extent of 20,000M², is not required to get a prior environmental clearance. By an express provision in Appendix XI to the said notification, it is clearly indicated that for the activity of digging a foundation, for buildings that are exempted from the requirement of prior environmental clearance, there is an exemption provided from obtaining prior environmental clearance. Under Rule 14(1) of the Kerala Minor Mineral Concession Rules 2015, a quarrying permit is envisaged for extraction of ordinary earth used

for filling or leveling purposes and in the construction of, *inter alia*, buildings. Rule 14(2) provides that no quarrying permit is required for extraction of ordinary earth in connection with the construction of residential buildings including flats or commercial buildings having a plinth area of 300M², if the owner of the land has obtained a valid permit for construction of the building from the Local Self Government Authorities concerned. It would follow therefore, that in the case of buildings having a plinth area of up to 300M², so long as the person constructing the building has a valid permit from the local authority, such a person would not require a mining permit for the purposes of an excavation in connection with the foundation of the building that he proposes to construct. This would be so as a result of the exemption granted under Rule 14 of the Kerala Minor Mineral Concession Rules, 2015. Similarly, the said person would also not be required to obtain any environmental clearance certificate, since the notification of the Ministry of Environment and Forest referred above, would grant him an exemption in that regard. I note from the facts in the instant writ petition that Ext.P1 building permit issued to the petitioner herein indicates that the building that is proposed to be constructed has a plinth area of 19631M². While the petitioner would be exempted from the requirement of prior environmental clearance, he would nevertheless have to obtain a mining permit as a

pre-condition for commencing mining activities in his land in connection with the construction of the building envisaged in Ext.P1 building permit. It is only after he commences mining operations pursuant to a valid mining permit granted to him that he can apply before the Geologist for the issuance of transit passes to transport the mined earth from his premises to outside. Accordingly, taking note of the facts in the instant writ petition, I dispose the writ petition with the following directions:

- (i) The 1st respondent shall, within a period of two weeks from the date of receipt of a copy of this judgment, consider and pass orders on Ext.P2 application, after verifying whether the mining activity contemplated by the petitioner is only for the foundation of the building that is proposed to be constructed in terms of Ext.P1 building permit.
- (ii) After the issuance of the mining permit to the petitioner, and after the excavation for the foundation of the building in question is completed by the petitioner, the 1st respondent Geologist shall once again visit the premises, so as to ascertain the quantity of earth that is excavated by the petitioner for the purposes of issuing necessary transit passes, to enable the petitioner to transport the mined earth from his premises to

outside. On the petitioner making an application for transit passes, after the excavation, the 1st respondent shall complete the exercise of visiting the premises of the petitioner and issuing the necessary transit passes to the petitioner, within a period of three weeks from the date of receipt of the application from the petitioner.

(iii) I make it clear that, while considering the application for mining permit as also the application for transit passes, the 1st respondent shall not insist on any environmental clearance certificate from the petitioner, in respect of the construction that is envisaged under Ext.P1 building permit.

(iv) The petitioner shall produce copy of the writ petition together with a copy of this judgment before the 1st respondent for further action.

A.K.JAYASANKARAN NAMBIAR
JUDGE

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