



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

TUESDAY, THE 18TH DAY OF JUNE 2024 / 28TH JYAISHTA, 1946

WP (C) NO. 13425 OF 2024

PETITIONER:

RAJESH K,
AGED 39 YEARS
SON OF SANKUNNY,
KALLICHOLAYIL HOUSE,
MAYANNUR P.O.,
MAYANNUR VILLAGE,
THALAPPILLY TALUK,
THRISSUR DISTRICT, PIN - 679105

BY ADVS.
P.M.ZIRAJ
IRFAN ZIRAJ

RESPONDENTS:

- 1 THE DISTRICT GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY,
THRISSUR DISTRICT, PIN - 680020
- 2 THE TAHASILDAR,
THALAPPILLY TALUK,
THRISSUR DISTRICT, PIN - 680623
- 3 THE VILLAGE OFFICER,
MAYANNUR VILLAGE,
THRISSUR DISTRICT, PIN - 679101
- 4 THE REVENUE DIVISIONAL OFFICER (RDO) ,
THRISSUR, THRISSUR DISTRICT, PIN - 680003
- 5 STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
INDUSTRIES DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

BY SRI.AJITH VISWANATHAN, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



WPC No.13425 of 2024

..2..

"C.R."

JUDGMENT

Dated this the 18th day of June, 2024

Petitioner is the owner in possession of landed property having an extent of 51.19 Ares. The petitioner stands in need of digging a pond therein for agricultural activities. The same involves extraction of granite. According to the petitioner, the granite is intended to be used for constructing the boundary walls of the pond. At any rate, the same is not required to be transported outside the premises. According to the petitioner, his activity will fall under Rule 106 of the Kerala Minor Mineral Concession Rules, 2015, which only speaks of an intimation to the competent authority. However, a stop memo has been issued, vide Ext.P4 treating the activity as one coming within Rule 104 of the Rules afore



WPC No.13425 of 2024

..3..

referred. The short issue, which falls for consideration is whether Rule 104 or 106 applies to the fact situation herein.

2. Heard the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

3. Learned Counsel for the petitioner would submit that, the purpose specified for extraction of granite is the construction of a pond. The specific case espoused by the petitioner is that the granite to be excavated will be used for construction of boundary walls of the pond and there is no requirement, whatsoever, to transport the granite outside the premises. So long as transportation of mineral or earth is not involved, Rule 104 is not attracted, is the submission made. The learned counsel would refer



WPC No.13425 of 2024

..4..

to the terms "extraction and transportation" as employed conjunctively in Rule 104 repeatedly, whereas, there is no such transportation envisaged in the main part of Rule 106. It is only in the proviso, which speaks of transportation of the mineral extracted, which requires enabling transit passes to be issued, after collecting the royalty.

4. Having heard the learned counsel appearing for the respective parties, this Court finds that the petitioner's case will fall under Rule 106, which is extracted here below:

"106. Extraction of minerals for special purposes.-- (1) In any case or class of cases such as construction of common facilities or residential building where extraction of minor mineral is inevitable as a part of the work, the person doing such work may be exempted from obtaining quarrying permit/lease under these rules: [Provided that before extraction of minor minerals, the person concerned shall intimate the competent authority his intention to carry out the works to



WPC No.13425 of 2024

..5..

be performed along with detailed proposal for excavation/ use /transportation and shall furnish necessary documents as required by the competent authority in this regard. If the extracted mineral is used as building material in the property from where the same is extracted then the person concerned shall remit royalty for all minerals except ordinary earth and if the extracted mineral including ordinary earth is to be transported outside the work site, the competent authority may issue special mineral transit passes after collecting the royalty.]

Explanation: For the purpose of this rule, "common facility" includes waiting sheds, public wells, public libraries and reading rooms, [recognized educational institutions] temples, churches, mosques used for public purpose."

(underlined by me, for emphasis)

This Court may emphasise the expression "such as" as employed in the beginning part of Rule 106(1), wherefore the case or class of cases is not exhausted by the two utilities specified in Rule 106(1), that is to say, construction of common



WPC No.13425 of 2024

..6..

facilities or construction of residential building. These two specific nature of constructions are prequalified by the term "such as", wherefore, other case or class of cases can also fall under Rule 106, wherein, extraction of minor mineral is inevitable as part of the work. Once Rule 106 applies, then the remaining question is whether it is a case of extraction simplicitor, or extraction coupled with transport. In the latter case, there should be enabling mineral transit passes to be issued by the competent authority, after collecting the royalty. However, in the former case, the only liability is to intimate the competent authority of the intention to carry out the works and also the payment of royalty for all minerals, except ordinary earth. Rule 104 speaks of grant of "special permission to extract and remove minor minerals in special circumstances". The entire gamut of Rule 104 would



WPC No.13425 of 2024

..7..

leave no doubt that Rule 104 envisages a larger activity, which requires a special permission from the State Government. It is unreasonable to contemplate that, for the purpose of extracting mineral from a residential property for digging a pond, the State Government has to apply its mind and grant permit/licence.

In the circumstances, this writ petition is disposed of declaring that stop memo issued vide Ext.P4 treating the activity as one falling under Rule 104 of the Kerala Minor Mineral and Concession Rules is bad in law and further clarifying that the activity of the petitioner falls under Rule 106. Needless to say that in case there is no transportation of the mineral required, the only liability of the petitioner is to intimate the competent authority as prescribed in Rule 106 and to pay royalty as provided in the



WPC No.13425 of 2024

..8..

proviso to Rule 106(1). It is for the competent authority to ensure that no transportation of the mineral takes place, contrary to the purpose projected by the petitioner for extraction of mineral.

Sd/-
C. JAYACHANDRAN
JUDGE

SSS



WPC No.13425 of 2024

..9..

APPENDIX OF WP(C) 13425/2024

PETITIONER EXHIBITS

| | |
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| Exhibit P1 | TRUE COPY OF THE TAX RECEIPT DATED 12.5.2023 ISSUED BY THE THIRD RESPONDENT |
| Exhibit P2 | TRUE COPY OF THE POSSESSION CERTIFICATE DATED 11.3.204 ISSUED BY THE THIRD RESPONDENT |
| Exhibit P3 | TRUE COPY OF THE SALE DEED NO.1828 OF 2022 OF PAZHAYANNOOR SUB REGISTRAR OFFICE DATED 17.9.2022IN CONNECTION WITH THE PROPERTY OF PETITIONER |
| Exhibit P4 | TRUE COPY OF THE STOP MEMO DATED 09.11.2022 ISSUED BY THE THIRD RESPONDENT TO THE PETITIONER |