



2024/KER/15

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

WEDNESDAY, THE 3<sup>RD</sup> DAY OF JANUARY 2024 / 13TH POUSHA, 1945

WP (C) NO. 28638 OF 2023

PETITIONER:

KALIMAN THOZHILALI KSHEMA VYAVASAYA  
SAHAKARANA SANGAM LTD.,  
REG.NO. IND (SL)-9/2019 DI&C, M.G.ROAD,  
MARATH LANE, THRISSUR,  
REPRESENTED BY ITS PRESIDENT, PIN - 680001

BY ADVS.  
PAUL ABRAHAM VAKKANAL  
ABRAHAM VAKKANAL (SR.)  
VINEETHA SUSAN THOMAS

RESPONDENTS:

- 1 DISTRICT GEOLOGIST,  
DISTRICT OFFICE, DEPARTMENT OF MINING AND GEOLOGY,  
CHEMBUKKAV, THRISSUR, KERALA, PIN - 680020
- 2 ASSISTANT DIRECTOR (H),  
HANDICRAFTS SERVICE CENTRE,  
O/O THE DC (HANDICRAFTS), A-BLOCK,  
4TH FLOOR, BSNL SANCHAR BHAVAN,  
KOVILAKATHUMPADAM, THRISSUR, PIN - 680022  
R BY SR.GP SRI.BIMAL K. NATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
03.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## JUDGMENT

The petitioner is an industrial Co-operative Society registered under the Kerala Co-operative Societies Act, 1969. The members of the Society are traditional artisans engaged in clay and pottery works. They have been issued with identity cards by the Ministry of Textiles, Government of India through the Assistant Director (H), Handicrafts Service Centre, Thrissur, the 2<sup>nd</sup> respondent.

2. On receiving information that large quantities of clay have been stacked in 2.08 Acres of land in Mukundapuram Taluk, the petitioner submitted Ext.P1 request before the 1<sup>st</sup> respondent, the District Geologist, to issue special transit passes to the artisans and the Society for the transportation of the clay invoking the provisions under Rule 106(5) of the Kerala



Minor Mineral Concession Rules, 2015 (hereinafter referred to as 'the KMMC Rules', for short). Identity cards of 314 artisans were also submitted along with Ext.P1. However, the Geologist issued Ext.P4 letter to the petitioner informing that, as per the judgment in W.P.(C) No.31702 of 2022 filed by the land owners, the clay dug out from their properties for the construction of ponds shall not be transported out of the property without obtaining permission from the Geologist and that the said property is classified as 'nilam' in the revenue records and as per the provisions of the Kerala Conservation of Paddy Land and Wetland Act, 2008 (hereinafter referred to as Paddy Land and Wetland Act), the application of the petitioner can be considered only after obtaining No Objection Certificate (NOC) from the Revenue Divisional Officer (RDO).

3. The petitioner contends that, as per Rule 106(5)



of the KMMC Rules, there is no requirement for traditional artisans making earthen pots to obtain NOC from the RDO for issuance of transit passes for transportation of ordinary clay up to 50 tonnes. According to the petitioner, the only requirement under Rule 106(5) is that the traditional artisans shall produce identity cards issued by the competent authorities. It is stated that the identity cards of the members of the Society were already produced along with Ext.P1 application. The petitioner states that Rule 104 of the KMMC Rules is not applicable in the case of the artisans issued with identity cards by competent authorities in view of Rule 106(5) of the said rules. Accordingly, this writ petition is filed challenging Ext.P4 and for a direction to the 1<sup>st</sup> respondent to issue special transit passes as sought for in Ext.P1 without insisting for NOC from the RDO.



4. A counter affidavit has been filed by the 1<sup>st</sup> respondent reiterating the stand taken in Ext.P4 and stating that since the subject land is classified as 'nilam' in the revenue records, NOC from the RDO is necessary. Reference is made to Rule 104 of the Rules and the judgment in W.P.(C) No.31702 of 2022 (Ext.R1(a)) and the order in R.P. No.204 of 2023 (Ext.R1(b)).

5. Heard Sri. Abraham Vakkanal, the learned senior counsel for the petitioner and Sri. Bimal K. Nath, the learned senior Government Pleader for the respondents.

6. W.P.(C) No.31702 of 2022 referred to above is filed by the owners of properties from where the petitioner has sought to remove the clay. The said properties are lying contiguous. They sought permission of the RDO to dig pond for aquaculture



activities. The properties are shown in the Basic Tax Register as 'nilam'. The Tahsildar has reported that there is no paddy cultivation in the said land or adjoining lands for the last several years. However, in view of the instructions of the District Collector not to grant permission for converting the paddy land for fish farming activities, the application was rejected. Challenging the same, the above writ petition was filed. This Court, by Ext.R1(a) judgment, permitted the petitioners therein to dig pond for aquaculture activities on condition that they give an undertaking that the ordinary earth removed for construction of pond will not be transported out of the 2.08 Acres of land, without obtaining appropriate licenses/permits / passes from the competent authority. The official respondents in the said writ petition filed R.P. No. 204 of 2023 contending that there is no power conferred on



the RDO under the Paddy Land and Wetland Act or the Rules framed thereunder to grant permission for aquaculture activities and that, if at all permission is to be granted, that has to be granted by the Local Level Monitoring Committee. However, the review petitioners submitted that if the activities of the writ petitioners are strictly as per the directions of the Court, the RDO does not intend to interfere with the aquaculture activities, provided they have all other statutory licenses and permits therefor. Accordingly, this Court passed Ext.R1(b) order reviewing Ext.R1(a) judgment to the extent that the writ petitioners shall not transport the clay or ordinary earth dug out from the land without obtaining permission from the Geologist.

7. It is thereafter that the petitioner submitted Ext.P1 application for issuance of special transit passes



for removal of the clay dug out from the property invoking the provisions under Rule 106 (5) of the KMMC Rules. According to the Geologist, since the land is classified as nilam, the petitioner has to obtain NOC from the RDO in order to process Ext.P1 application. Rule 104 of the KMMC Rules reads as follows:

**“104. Power of State Government to grant special permission to extract and remove minor minerals in special circumstances.--**In any case or class of cases where extraction of minor mineral is inevitable for any legitimate purpose, other than winning the mineral, the applicant shall submit an application along with the No Objection Certificate issued by the Revenue Divisional Officer to the State Government for its extraction and transportation and in such cases if the State Government is of the opinion that the extraction and transportation of minerals is inevitable, the State





Government may for reasons to be recorded in writing, issue an order in writing granting permission for extraction and transportation of such minerals with such terms and conditions as they deems fit. The applicant shall remit royalty as specified in Schedule I for the quantity of the mineral extracted:

Provided that, in such cases, the application shall be submitted through the Director of Mining and Geology and along with the application for extraction and transportation of minerals, the applicant shall produce documents as required by the competent authority for substantiating the details furnished in the application.

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[Note 1:- No special permission under



these rules is required in cases where the owner of any dry land, in his own responsibility, carries out levelling of his own contiguous dry land by cutting and filling of ordinary earth and where no transportation of ordinary earth is required through public road for such levelling operation. In such cases, before starting the levelling work, the owner of the land shall intimate the District Geologist his intention to carry out the levelling work.

Note 2:- No permission under these rules is required for extraction of minerals not exceeding 150 metric tonnes in connection with the construction of appurtenant structures of a building such as well, septic tank, recharge pit, drainage work, compound wall and the like. In such cases, if the owner of the land intends to transport the excavated mineral out of the work site, he shall apply for mineral transit passes under Kerala Minerals (Prevention of illegal mining, storage and transportation) Rules, 2015 and the



competent authorities under these rules may issue mineral transit passes on payment of royalty for the mineral to be transported. The application for mineral transit passes shall be accompanied by possession and enjoyment certificate of the land from where the mineral is to be extracted issued by the Village Officer concerned and a sworn affidavit in stamped paper by the owner of the land to the effect that he shall abide by conditions mentioned in the order granting permission for transportation of mineral.

Note 3:- In cases where extraction/removal of mineral is inevitable for prevention of any disaster or for removal of mineral deposited or accumulated consequent to any natural calamity, the competent authorities of the Department of Mining and Geology shall issue mineral transit passes for removal of such mineral after obtaining prior permission from the District Disaster Management Authority. The applicant shall remit royalty as specified in Schedule



1 for transporting the mineral.

Note 4:- Nothing in these rules shall apply to the extraction and/ or removal of any mineral by the District Disaster Management Authority in connection with the prevention or mitigation of any type of natural disaster that are imminent and for restoration/ rescue operations in connection with any natural disasters.]”

8. Rule 106 of the KMMC Rules deals with extraction of minor minerals for special purposes and sub-rule (5) thereof reads as follows:

**106.Extraction of minerals for special purposes.--**

xxx xxx xxx

(5) Nothing in these rules shall apply to the extraction of ordinary clay up to a quantity of 50 tonnes by traditional artisans making earthen pots or Co-operative Societies of such artisans for making pots by traditional means in a calendar year:



Provided further that in cases where traditional artisans making earthen pots or Co-operative Societies of such artisans produce identity cards issued by the General Manager of the District Industries Centre of the State or such other authorities so as to prove their identity in this respect, the competent authority under these rules may issue special transit passes for the transportation of 50 tonnes of ordinary clay every year without payment of any royalty or fee by them.”

Rule 106(5) makes it clear that the provisions in the KMMC Rules shall not apply to the extraction of ordinary clay up to a quantity of 50 tonnes by traditional artisans making earthen pots or Co-operative Societies of such artisans for making pots by traditional means in a calendar year, provided they produce identity cards issued by competent authorities and the Geologist may issue special transit passes for



transportation of 50 tonnes of ordinary clay every year without payment of any royalty or fee by them. In view of the *non obstante* clause in Rule 106(5), the NOC of the RDO under Rule 104 cannot be insisted upon for issuance of special transit passes, provided the artisans produce identity cards issued by competent authorities.

Accordingly, Ext.P4 issued by the 1<sup>st</sup> respondent insisting for NOC from RDO to process Ext.P1 application cannot be sustained and the same is set aside. The 1<sup>st</sup> respondent is directed to consider Ext.P1 application of the petitioner for special transit passes under Rule 106(5) of the KMMC Rules without insisting for NOC from the RDO and in the light of the directions in Ext.R1(a) judgment as reviewed by Ext.R1(b) order and in accordance with law. A final decision shall be taken thereon, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of



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a certified copy of this judgment after hearing the petitioner and the petitioners in W.P.(C) No.31702 of 2022.

The writ petition is disposed of.

**Sd/-**

**MURALI PURUSHOTHAMAN  
JUDGE**

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APPENDIX

## PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE APPLICATION DATED 12-5-2023 GIVEN TO THE 1ST RESPONDENT GEOLOGIST, WITHOUT ENCLOSURES.

Exhibit P2 TRUE COPY OF THE LETTER NO. 9426/A4/14/INDUSTRIES DATED 9-4-2015.

Exhibit P3 TRUE COPY OF THE APPLICATION DATED 12-6-2023 ENCLOSING THE LETTER OF THE HANDICRAFT ASST. DIRECTOR AND THE LIST OF 314 ARTISANS, GIVEN TO THE 1ST RESPONDENT GEOLOGIST, WITHOUT THE COPIES OF THE ARTISAN ID CARDS.

Exhibit P4 TRUE COPY OF THE LETTER DATED 21-7-2023 FROM THE 1ST RESPONDENT GEOLOGIST.

Exhibit P5 TRUE COPY OF THE UNDERTAKING DATED 7-11-2022 WHICH IS MARKED AS ANNEXURE A3 IN CON.CASE(C) NO. 2453/2022.

RESPONDENT EXHIBITS

EXHIBIT R1 (A) A TRUE COPY OF THE JUDGMENT DATED 17/10/2022 IN WP(C) 31702/2022 FILED BY THIS LAND OWNERS OF THE ABOVE SAID PROPERTY

EXHIBIT R1 (B) A TRUE COPY OF THE JUDGMENT DATED 02/03/2023 IN RP NO. 204/2023