

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

WP(C) .No. 14666 of 2015 (G)

PETITIONER(S) :

MANAGER
ST.JOSEPH L.P SCHOOL,
ALLOOR DESOM, P.O MATTOM
THRISSUR DISTRICT (FR.VICAR ST.SEBASTIAN
CHURCH ALOOR, P.OMATTOM
THRISSUR DISTRICT) .
BY ADV. SRI.SHOBY K.FRANCIS

RESPONDENT (S) :

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1. THE DISTRICT GEOLOGIST
OFFICE OF THE GEOLOGIST
DEPARTMENT OF MINING AND GEOLOGY,
AYYANTHOLE P.O
THRISSUR DISTRICT. 68003.
 2. THE DIRECTOR OF MINING AND GEOLOGY
KESAVADASAPURAM, PATTOM,
THIRUVANANTHAPURAM 695 001.
 3. THE VILLAGE OFFICER,
ALLOOR VILLAGE, MATTOM P.O,
THRISSUR DISTRICT. 680 602.

(P.T.O)

WP(C) .No. 14666 of 2015 (G)

4. DISTRICT EDUCATIONAL OFFICER
OFFICE OF THE DEO, CHAVAKKAD EDUCATIONAL
DISTRICT, CHAVAKKAD P.O,
THRISSUR DISTRICT. 680 506.

R BY SR.GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 25-05-2015, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

WP(C) .No. 14666 of 2015 (G)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. COPY OF THE BASIC TAX RECEIPT DATED
11.5.15 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P2. COPY OF THE ORDER DATED 28.4.15 ISSUED
BY THE 4TH RESPONDENT TO THE PETITIONER.

EXHIBIT P3. COPY OF THE BUILDING PERMIT ISSUED BY
THE LOCAL GRAMA PANCHAYATH DATED 6.3.15
TO THE PETITIONER.

EXHIBIT P4. COPY OF THE POSSESSION CERTIFICATE DATED
17.12.14 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P5. COPY OF THE JUDGMENT IN WPC 12079/15
DATED 10.4.15.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

vk

PA TO JUDGE

K.VINOD CHANDRAN, J.

W.P.(C).No.14666 of 2015

Dated this the 25th day of May, 2015

JUDGMENT

The petitioner is the Manager of an aided school, who seek consideration of Ext.P3 application purportedly filed under the Kerala Minor and Mineral Concession Rules, 2015 (for brevity 'the Rules) . The school building of the petitioner was in a dilapidated stage, being of more than 100 years of age, and hence, the petitioner had applied for permission to re-construct the building, which was allowed as per Ext.P2. Subsequently, on the plan of the new building also being approved by the Local Self Government Department, by Ext.P3, the petitioner applied for Mineral Transit Passes, as per the Rules. The petitioner's contention is that, the same has not been accepted, since, according to the Government, there is no exemption for the school building proposed to be constructed by the petitioner. The petitioner claims that the construction is a public work and

hence is exempted under Rule 106(3) of the Rules.

2. The learned Government Pleader points out that the plinth area of the building, as is evident from Ext.P3, is 382.44 square meters and the exemption applicable under Rule 14 of the Rules is only with respect to both commercial and residential buildings having a plinth area of 300 square meters. The petitioner intending to construct a building, above the limit prescribed under Rule 14(2) of the Rules of 2015, has to apply for quarrying permit as per Rule 14 of the Rules, is the contention.

3. With respect to the exemption claimed under Rule 106(3) of the Rules, the learned Government Pleader would contend that, the school building proposed to be constructed by the Manager of an aided school would not come within the purview of “public work” as indicated in the Rule which is extracted here under.

Rule 106(3): Where in the construction of public works like roads, canals, irrigation projects, railways, as a part of the work, if extraction of minor mineral is inevitable, the department/authority may do so without obtaining quarrying permit under

these rules. If the extracted mineral is to be transported out of the work site, competent authority shall issue mineral transit passes on an application made by the authority concerned, after collecting the royalty.

4. The “constructions” contemplated in the said Rule are specifically constructions undertaken by the departments/authority, meaning a Government department or authority under the Government. Merely for the reason that, the petitioner's school is granted aid for running the school; the construction of school building cannot be said to be one which is in pursuance of a public duty, nor can it be said to be a “public work” as indicated in Rule 106(3) of the Rules.

5. In such circumstances, this court is not inclined to accept the contention of the petitioner that the school building proposed to be constructed by the petitioner is one, which permits exemption under Rule 106(3) of the Rules. The petitioner, hence, would have to approach the competent authority under the Rules of 2015 for a permit under Rule 14.

The writ petition would stand closed with the above liberty. It is also made clear that even if excavation is already carried on, the Competent Authority shall conduct an inspection and on verification as against the approved building plan, if found to be excavated only for the purpose of the construction, grant permit in accordance with the Rules. The above direction is only on account of the peculiar facts of the case and the bonafide contention raised.

**K.VINOD CHANDRAN
JUDGE**

AD