

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

WP(C).No. 37459 of 2015 (F)

PETITIONER(S):

**AJITH, AGED 37 YEARS,
S/O. SEBASTAIN K.A., KUNNAPPALLIYAL, AYARKUNNAM MURI,
AYARKUNNAM VILLAGE, KOTTAYAM TALUK, KOTTAYAM DISTRICT.**

BY ADV. SRI.AJITH MURALI

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE DISTRICT COLLECTOR,
KOTTAYAM, KOTTAYAM DISTRICT - 686 001.**
- 3. THE REVENUE DIVISIONAL OFFICER,
KOTTAYAM, KOTTAYAM DISTRICT - 686 001.**
- 4. THAHASILDAR, TALUK OFFICE,
KOTTAYAM TALUK, KOTTAYAM DISTRICT - 686 001.**
- 5. THE VILLAGE OFFICER, AYARKUNNAM VILLAGE,
KOTTAYAM TALUK, KOTTAYAM DISTRICT - 686 001.**
- 6. THE SECRETARY,
AYARKUNNAM GRAMA PANCHAYATH, KOTTAYAM TALUK
KOTTAYAM DISTRICT - 686 001.**
- 7. THE SENIOR GEOLOGIST,
DEPARTMENT OF MINING AND GEOLOGY, KOTTAYAM
KOTTAYAM DISTRICT - 686 001.**
- 8. THE DIRECTOR
DEPARTMENT OF MINING AND GEOLOGY
THIRUVANANTHAPURAM - 686 001.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 37459 of 2015 (F)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - THE TRUE COPY OF THE BUILDING PERMIT NO. A4/7622/2015 DT. 04.7.2015
ISSUED BY THE 6TH RESPONDENT, SECRETARY OF AYURKONNAM GRAMA
PANCHAYATH.**
- P2 - THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE 4TH RESPONDENT DT. 15.7.2015.**
- P3 - THE TRUE COPY OF THE REPORT NO. 610/2015 PREPARED BY THE
5TH RESPONDENT DT. 24.7.2015.**
- P4 - THE TRUE COPY OF THE REPORT NO.16067/2015 PREPARED BY THE
4TH RESPONDENT DT. 25.8.2015.**
- P5 - THE TRUE COPY OF THE REPORT NO. 20806/2015 PREPARED BY THE
4TH RESPONDENT DT. 21.10.2015 OFFICER.**
- P6 - THE TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER
BEFORE THE 8TH RESPONDENT DT. 25.7.2015.**
- P7 - THE TRUE COPY OF THE ACKNOWLEDGMENT FOR RECEIPT OF MONEY ISSUED
BY THE 8TH RESPONDENT DT. 26.10.2015.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.37459 of 2015

Dated this the 10^mth day of December, 2015

J U D G M E N T

The petitioner is a trustee of St. Sebastian Church at Ayarkunnam village. The Trust has obtained a permit from the Ayurkonnamm Grama Panchayat for constructing a school building in the church premises. This involved the extraction of ordinary earth from the site. The petitioner also applied for the environmental clearance. The petitioner submits that in view of the Rule 106 of the Kerala Minor Mineral Concession Rules, without obtaining environmental clearance and on payment of royalty, they are entitled for necessary transit pass.

2. On the other hand the learned Government Pleader submit that school building would not come within the ambit of Rule 106. Therefore, the petitioner will have to obtain environmental clearance.

3. It is appropriate to refer 106 of the Kerala Minor Mineral Concession Rules, which reads as follows

Extraction of minerals for specials 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 carryout the works to be performed and shall furnish necessary documents as required by the competent authority in this regard. If the extracted mineral is to be transported outside the work site, the competent authority may issue special mineral transit passes after collecting the royalty.

4. If any case or classes of cases such a construction of common facilities or residential building, the extraction of minor minerals is inevitable as a part of the work, the person doing such work may be exempted from obtaining quarrying permit/lease under these Rules. By explanation added to the above Rules, common facilities defined to include waiting shed, public wells, temples, churches, mosques etc. used for public purpose. This explanation only indicates the common facilities referred to as above also include among common facilities. The definition is not exhaustive. Therefore, the common facilities

have to be understood in common parlance. Activity relating to school is certainly a public activity for the public. What is intended in the common facilities is explained by the explanation that when activities is in relation to the public good and public purposes, the same shall be exempted. Common facility therefore has to be defined as an activity in relation to public purposes.

5. In that view of the matter, this Court is of the view that if Geologist is satisfied that the proposed construction is for school building necessary transit pass shall be issued to petitioner without insisting for environmental clearance. Needful shall be done within a period of two weeks from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

sd/

**A.MUHAMED MUSTAQUE,
JUDGE**

jm/