

(2010) 03 KL CK 0103

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 3552 of 2010 (T)

Sunil Jacob, Rosakkutty Thomas, E.V. Joseph and Kuruvilla
Varkey

APPELLANT

Vs

Infant Jesus Metal Crusher, District Board Under Industrial
Single, Kodangoor Grama Panchayath and Chief Town Planner

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Kerala Municipality Building Rules, 1999 — Rule 57(5)

Citation : (2010) 03 KL CK 0103

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Viju Abraham, for the Appellant; Mathew John (K), for the Respondent

Judgement

Antony Dominic, J.—The challenge in this writ petition is against Ext. P1, the decision taken by the 2nd respondent, directing the Secretary of the 3rd respondent Panchayat to grant licence to the first respondent for the establishment of a Stone Crusher Unit. The challenge raised by the petitioner is mainly on the ground that the width of access road to the proposed crusher unit is less than 5 meters. It is therefore submitted that, the access road does not satisfy the requirement of Rule 57(5) of the Kerala Municipality Building Rules. Counsel also referred me to Exts. P2, P3 and P4, the report of the Engineer, the report of the Chief Town Planner and the proceedings of the Panchayat, where also it is mentioned that the width of the road is less than 5 meters.

2. However, a reading of Ext. P1, the proceedings of the 2nd respondent shows that it was taking into account that the area is a developed area where two similar industrial units are already functioning, that license was directed to be granted to the petitioner, in spite of the fact that the access road is having an average width of 3 meters. The proviso to Rule 57(5) shows that in all existing developed areas other than industrial areas where small scale industrial units are

permissible, minimum width of approach road shall not be less than 3 meters. From Exts. P2, P3 and P4 itself it is obvious that the access road is having average width of 2 meters. This has been taken note of in Ext. P1 proceedings of the 2nd respondent also.

3. Therefore, it is evident that the 2nd respondent took its decision giving the first respondent the benefit of proviso to Rule 57(5) of the Kerala Municipality Building Rules and if that be so the decision of the 2nd respondent cannot be faulted. Therefore challenge against Ext. P1 has to fail.

4. However, counsel for the petitioners submits that while granting consent, Ext. P5 office order issued by the Pollution Control Board has not been taken into account. If the petitioners have such a grievance it is up to the petitioners to pursue their grievance against Ext. R1(a) consent granted by the Pollution Control Board in favour of the first respondent.

Therefore, the writ petition is closed.