

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19886 of 2015

1. Ramashankar Singh
2. Vijay Shankar Singh
3. Vipin Bihari Singh

All above Sons of Late Ram Adhin Singh, Residents of Village-
Moresarai, Police Station- Shivsagar, District- Rohtas

... .. Petitioner/s

Versus

1. The Union Of India through the Secretary, Ministry of Road Transport and National Highway
2. The General Manager cum Project Director, National Highway Authority of India, Project Implementation Unit, Varanasi, Uttar Pradesh
3. The Regional Officer, National Highway Authority of India, Lakhnow
4. The State of Bihar through the Chief Secretary
5. The District Land Acquisition Officer, Rohtas, Bihar

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 878 of 2016

1. Upendra Kumar Singh, son of Late Ram Belas Singh
2. Arun Kumar Singh, son of Late Jeetnarayan Singh
Both Residents of village- Moresarai, P.S.- Shivsagar, District- Rohtas

... .. Petitioner/s

Versus

1. The Union Of India thorough the Secretary, Ministry of Road Transport and National Highway, New Delhi
2. The General Manager cum Project Director, National Highway Authority of India, Project Implementation Unit, Varanasi, Uttar Pradesh
3. The Regional Officer, National Highway Authority of India, Lakhnow
4. The State of Bihar through the Chief Secretary
5. The District Land Acquisition Officer, Rohtas, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Mr. Satya Prakash, Advocate
For the U.O.I.	:	Mr. (Dr.) K. N. Singh, A.S.G.
For NHAI	:	Mr. S. D. Sanjay, Sr. Advocate Mr. Anshay Bahadur Mathur, Advocates



For the State : Mr. Shailendra Kumar, A.C. to PAAG 2

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR**

**CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

Date : 24-08-2020

Heard the parties.

Petitioners of C.W.J.C. No.19886 of 2015 have prayed for
following reliefs:-

1. For issuance of writ in the nature of mandamus or any other appropriate writ for restraining the respondents authorities from construction of Toll Plaza at 890 KM to 934 KM of NH 2 in four/six laning of Varanasi-Aurangabad Section as the construction of Toll Plaza is in violation of Rule 8 National Highway Fee (Determination of Rates and Collection Rules, 2008 (hereinafter refer as “NH Fee Rule 2008 only”).
2. For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents authorities to shift the construction of Toll Plaza at 890 Km to 934 KM of NH 2 in four/six laning of Varanasi-Aurangabad Section to another place as the construction of Toll Plaza is in violation of Rule 8 of the NH Fee Rule 2008.
3. For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents authorities to produce a copy of the Detailed Progress Report (DPR) whereby a proposal was given for construction of Toll plaza at 890 KM to 934 KM of NH 2 and further be pleased to quash the same as the authorities of NHAI approved the DPR which was



against the NH Fee Rule 2008.

4. For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the orders dated 28.04.2015 and 21.04.2015 passed by the Land Acquisition Officer, Rohtas, whereby the objections of the petitioners with a prayer to release the land pertaining to Mouza Kawadihri, Khesra No.86 & Mouza Sarai, Khata No.217 Khesra No.75 & 76 from acquisition in pursuance of Notification No.2435 dated 01.12.2014 has been rejected.
5. For holding that the construction of Toll Plaza at 890 KM to 934 KM of NH 2 in four/six laning of Varanasi – Aurangabad Section is contrary to the Rule 8 of the NH Fee Rule 2008 and as such the land acquisition of the petitioners for the purpose construction of Toll Plaza on NH 2 is illegal, arbitrary, unsustainable and against the settled principle of law.
6. For issuance of any other writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

Petitioners of C.W.J.C. No.878 of 2016 have prayed for following reliefs:-

- i) For issuance of writ in the nature of mandamus or any other appropriate writ for restraining the respondents authorities from construction of Toll Plaza at 890 KM to 934 KM of NH 2 in four/six laning of Varanasi-Aurangabad Section as the construction of Toll Plaza is in violation of Rule 8 of National Highway Fee (Determination of Rates and Collection Rules, 2008 hereinafter refer as “NH Fee Rule 2008 only”.
- ii) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the



respondents authorities to shift the construction of Toll Plaza at 890 KM to 934 KM of NH 2 in four/six laning of Varanasi-Aurangabad Section to another place as the construction of Toll Plaza is in violation of Rule 8 of the NH Fee Rule 2008.

- iii) For issuance of writ in the nature of mandamus or any other appropriate writ for directing the respondents authorities to produce a copy of the detailed progress Report (DPR) whereby a proposal was given for construction of toll plaza at 890 KM to 934 KM of NH 2 and further be pleased to quash the same as the authorities of NHAI approved the DPR which was against the NH Fee Rule 2008.
- iv) For issuance of writ in the nature of certiorari or any other appropriate writ for quashing the order dated 28.04.2015 passed by the Land Acquisition Officer, Rohtas, whereby the objections of the petitioners with a prayer to release the land pertaining to Mauza Gorwar, Khesra No. 45, Area 11750 square Meter from acquisition in pursuance of Notification No. 2435 dated 01.12.2014 has been rejected.
- v) For holding that the construction of Toll Plaza at 890 Km to 934 KM of NH 2 in four/six laning of Varanasi-Aurangabad Section is contrary to the Rule 8 of the NH Fee 2008 and as such the land acquisition of the petitioners for the purpose construction of Toll Plaza on NH 2 is illegal, arbitrary, unsustainable and against the settled principle of law.
- vi) For issuance of any other writ, order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

Petitioners have confined their prayer with respect to acquisition of land of Mauza Gorwar appertaining to Khata



No.58, Khesra No.45 measuring 11,750 square meters for construction of toll plaza.

According to petitioners in partition suit No. 1265 of 1972 on the basis of compromise decree a piece of land appertaining to Khata No. 58, Khesra No. 45 Mauza Gorwar came in the share and possession of petitioners and accordingly a land possession certificate was issued with respect to half portion of land appertaining to Khata No.58 Khesra No. 45.

By Gazette Notification dated 01.12.2014 of the Ministry of Road Transport and National Highway the land appertaining to Mauza Gorwar, Khata No. 58, Khesra No. 45 measuring 11,750 square metre were notified for construction of Toll Plaza in the district of Rohtas on NH 2 between 890 KM to 934 KM (Varanasi-Aurangabad Section). Objections were invited under Section 3ga(1) of the National Highway Act, 1956 to file objection within 21 days from the publication of notification, pursuant to which objections were filed before the competent authority-cum District Land Acquisition Officer, Rohtas with a prayer to free the plot of petitioners from acquisition as they require the plot for installation of factory/rice mill for their livelihood which was dismissed by order dated 28.04.2015 passed by the Land Acquisition Officer on the



ground that NHAI have not given consent to free the land from acquisition.

It has been submitted on behalf of petitioners that land of the petitioners were acquired for construction of toll plaza on NH2 and minimum distance between two toll plazas has to be 60 kilometre as per NH Fee Rules, 2008. Altogether 4 Toll Plaza, i.e., Varanasi, Mohania, Sasaram and Saukala are situated on NH 2 between Varanasi to Amaus (Gaya) and they are situated at a distance of 60,48 and 98 kilometre respectively.

It is further submitted that without assigning any reason in writing by the executing agency or concessionaire as per requirement of NH Fee Rules, 2008, the toll plaza is being constructed at a distance of 2 to 2.5 kilometre from Sasaram Municipal Town area and same is only 48 kilometres from another toll plaza situated at Mohania on NH 2 which is in violation of NH Fees Rules, 2008M as no section or national highway, permanent bridge, by-pass or tunnel has been constructed within Sasaram Municipal Area limit or within 5 kilometres from such limit.

Toll plazas are being constructed in the district of Rohtas in violation of Rule 8 of the NH Fee Rule, 2008, according to which, distance between two toll plazas has to be



60 kilometres and no toll plaza can be constructed within 10 kilometres of municipal limit. Although relaxation of such Rules has been provided in proviso but same can be resorted to for valid reasons to be assigned in writing by the executing agency or concessionaire.

Site of toll plaza is also in violation of para 6.3 of the Ministry of Road Transport and Highway circulars dated 25.9.2003 and 17.10.2003 which provides that no toll plaza would be installed within one kilometre of fuel station. Detail progress report (DPR) of construction of toll plaza at 890 kilometres to 934 kilometre of NH 2 has been approved by the authorities of NHAI in violation of NH Fee Rule, 2008 which is mandatory in nature.

Counter affidavit has been filed on behalf of NHAI in which it has been stated that toll plaza is located at a distance between 5 kilometre - 10 kilometre from the outer boundary of Sasaram Municipal area in support of which letter dated 01.02.2019 of Circle Officer has been enclosed as Annexure. The Executing authority after placing reliance on the recommendations submitted by the Technical experts in the detailed project report (DPR) has recorded the reason in writing for allowing the concessionaire to locate the proposed toll plaza



at a distance of more than 5 kilometres but within 10 kilometres from Sasaram Municipal area. Toll plaza is in consonance with the first proviso to Rule 8(1) of the National Highways Fee Rule, 2008 which is being reproduced below:-

“Rule 8(1) The executing authority or the concessionaire, as the case may be, shall establish a toll plaza beyond a distance of ten kilometres from a municipal or local town area limits:

Provided that the executing authority may, for reasons to be recorded in writing, locate or allow the concessionaire to locate a toll plaza within a distance of ten kilometres of such municipal or local town area limits, but in no case within five kilometres of such municipal or local town area limits:

Provided further that where a section of the national highway, permanent bridge, bypass or tunnel, as the case may be, is constructed within the municipal or town area limits or within five kilometres from such limits, primarily for use of the residents of such municipal or town area, the toll plaza may be established within the municipal or town area limits or within a distance of five kilometres from such limits.”

As the toll plaza is to be constructed within 5 to 10 kilometres, same is covered by the first proviso to Rule 8(1) and as such the applicability of second proviso to Rule 8(1) does not arise. The Circle Officer, Sheosagar, Rohtas after



physical verification of distance has informed by letter dated 01.02.2019 that proposed Toll Plaza is at a distance of 5.12 KM from boundary of Sasaram Nagar Palika.

As far as construction of toll plaza at a distance of 48 kilometres from the Mohania toll plaza on the same section of NH 2 is concerned, same has been done as per the stipulation provided in the first proviso to Rule 8(2) of the NH Fee Rule, 2008 which is being reproduced below:-

“Rule 8(2) “Any other toll plaza on the same section of national highway and in the same direction shall not be established within a distance of sixty kilometres:

Provided that where the executing authority deems necessary, it may for reasons to be recorded in writing, establish or allow the concessionaire to establish another toll plaza within a distance of sixty kilometres:

Provided further that a toll plaza may be established within a distance of sixty kilometres from another toll plaza if such toll plaza is for collection of fee for a permanent bridge, bypass or tunnel.”

Executing authority based upon the recommendation submitted by technical experts in detailed project report (DPR) has recorded the reason in writing for allowing the concessionaire to locate the toll plaza at a distance of 48 kilometre from the Mohania toll plaza on the same section of



NH 2 for the following reason:-

(i) If the Toll plaza on NH 2 is further shifted on the Sasaram bypass, i.e., Route ABC (as shown in the map) then the vehicle going to Aurangabad from Varanasi will try to evade the toll tax and choose A B1 C route. Further commuters going to Patna either from Varanasi end or from Aurangabad end will automatically get benefitted of it because they will be on route A B1 B2 or C B1 B2 thus evading the toll taxes for the entire toll route covered by them.

(ii) It would be a matter of great traffic concern and safety of commuters as well as citizens of Sasaram Town if all the vehicles start choosing the A B1 C / C B1 A routes evading the Sasaram bypass. This would also result in huge revenue loss to the government exchequer, which the toll booths are basically made for.

Toll plaza is not in violation of circular dated 25.9.2003 as same is applicable to the new fuel stations that would come up after issuance of aforesaid circular. In present case, fuel stations have been existing from before and in view of Clause 7 of aforesaid circular, such fuel stations are not covered by the provisions made therein.

It has been further submitted that petitioners in their objection dated 06.01.2014 and subsequent objection for releasing the land from acquisition did not raise any objection with respect to location of Toll Plaza, as such, they are precluded to raise said objection in writ petition.

It has been further stated that the proposed Toll Plaza



is 1.035 KMs from the temporarily functional existing toll plaza, as such, the contentions of petitioners that there is difference of only 200 meters between existing Toll Plaza and proposed toll plaza is not correct.

It is further stated in reply to the allegation that Toll Plaza in question was not mentioned in concessionaire agreement it is evident that the authority has entered into an agreement with M/s Soma Isolux Varanasi- Aurangabad Tollway Pvt. Ltd. For the development, operation and maintenance of the existing four lane Section of NH 2 (New Chainage KM 786.00 KMs to 978.400 Varanasi-Aurangabad). Execution Authority based upon the recommendations submitted by Technical Expert in the DPR has recorded the reasons in writing for allowing the concessionaire to locate the proposed Toll Plaza at a distance of 48 KM from Mohania Toll Plaza of the same section of NH 2 and on basis of said recommendations a Gazette Notification dated 16.06.2011 was published by Ministry of Road Transport and Highway in which location of the toll plaza and its length for which fee payable has been notified. The location of toll plaza in question has been mentioned at serial No. 3 at 907.100 k.m.

Counsel for the respondents have relied upon different



judgments passed by the Apex Court as well as different High Courts that in matter of selection of location of Toll Plaza and for widening of the National Highway the site selected by the experts should not be interfered by a writ court unless glaring absurdity or malafide intentions of the respondents is apparent on the face of record.

In case of Union of India Vs Kushalaya Shetty and Others since reported in AIR 2011 SC 3210 the Hon'ble Apex Court in paragraph Nos. 21 and 24 has held as follows:-

“21. The plea of the respondents that alignment of the proposed widening of National Highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the National Highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides.

24. Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The projects involving construction



of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of National Highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.

After hearing the parties and considering the materials available on record, this Court is not inclined to interfere in the decision taken by the respondent National Highway Authority for construction of Toll Plaza located at a distance of more than 5 KM but less than 10 KM of Sasaram Municipal area as well as



located at 48 Kms away from Mohania Toll Plaza as construction of Toll Plaza was permissible within proviso of Rule 8(i) and (ii) of the Fee Rules and same is based on reasons as recorded by the Technical Experts and nothing has been brought on record to show any malafide intention or extraneous consideration for permitting construction of Toll Plaza on said location.

This Court does not find any merit in both writ petitions and are accordingly dismissed.

(S. Kumar, J)

Sanjay Karol, CJ : I agree

(Sanjay Karol, CJ)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	10.07.2020
Uploading Date	
Transmission Date	NA

