



W.P(MD)No.27026 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.P(MD)No.27026 of 2022
and W.M.P(MD)No.21194 of 2022**

A.Irulandi

... Petitioner

vs.

- 1.The Government of India,
Represented by the Commissioner,
The National Highways Authority of India,
Ministry of Road Transport and Highways,
New Delhi.
- 2.The Regional Officer,
The National Highways Authority of India,
Government of India,
Ministry of Road Transport and Highways,
2nd & 3rd Floor, Vijay Krsihna Plaza,
No.1, Lake Area, Madurai Main Road,
Mattuthavani, Madurai – 625 007.
- 3.The Regional Project Director,
The National Highways Authority of India,
Government of India,
Ministry of Road Transport and Highways,
Plot No.3, Surya Towers Second Floor,
East 1st Street, K.K.Nagar,
Madurai – 625 020.

... Respondents



W.P(MD)No.27026 of 2022

WEB C **PRAYER :** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to drop the proposed project work of fee plaza construction of Upparpatty Village in Dindigul – Theni – Kumuli Highways Road.

For Petitioner : Mr.N.S.Ponnaiah

For Respondent No.1 : No appearance

For Respondent Nos.2 & 3 : Mr.P.Karthik

ORDER

(Order of the Court was made by R.SURESH KUMAR, J.)

The prayer sought for in this Writ Petition is for a Writ of Mandamus, to direct the respondents to drop the proposed project work of fee plaza construction of Upparpatty Village in Dindigul – Theni – Kumuli Highways Road.

2. There are two Highways, namely, one is National Highway 220, which runs between Dindigul and Kumuli and another one is State Highway, which runs between Madurai and Theni. The National Highway 220 connects at a point near Theni Town with the State Highway between Theni and Madurai. As per the National Highways Act under its rule-making power, the Rule has been framed as 'the National Highways Fee (Determination of

2/12



W.P(MD)No.27026 of 2022

WEB COPY

Rates and Collection) Rules, 2008 (in short hereinafter referred to as 'the Rules'). Under Rule 8(1) of the said Rules, the executing authority or the concessionaire, as the case may be, can establish a toll plaza beyond a distance of 10 kilometers from a Municipal or local town area limits.

3. Accordingly, if at all any toll plaza is to be established in any National Highway, the authority concerned can establish it beyond 10 kilometers of Municipal limit or local town area limit. Now the proposed toll plaza at Upparpatty Village in between Theni and Chinnamanoor Municipality is according to the writ petitioner, within 10 kilometers of Municipal limit of Theni Town. Therefore, the proposed location of the fee plaza violates Rule 8(1) of the said Rules. Therefore, on the ground, the said proposal of the respondents ie., Project Director, National Highways Authority of India at Madurai has been questioned and therefore, a Writ of Mandamus has been sought for in this Writ Petition seeking a direction to drop the said proposed project of establishing toll plaza at Upparpatty Village in Dindigul – Theni – Kumuli Highways Road.

4. In support of this prayer, Mr.N.S.Ponnaiah, learned counsel appearing for the petitioner had made submissions inviting the attention of



W.P(MD)No.27026 of 2022

WEB COPY

this Court to Rule 8(1) of the said Rules and would submit that in view of the mandate issued under Rule 8(1) of the Rules, no toll plaza shall be established within 10 kilometers from the Municipal limit or local town area limit and since admittedly the proposed toll plaza is going to be established within 10 kilometers distance from Theni Municipal Town, it violates Rule 8(1) of the said Rules.

5.The learned counsel appearing for the petitioner would also submit that if at all the proviso to Rule 8(1) of the said Rules is invoked by the respondents and based on which, if they proposed to locate a toll plaza within 10 kilometers but beyond 5 kilometers from the Municipal limit that is what exactly they are going to do in this case, before establishing such toll plaza within 10 kilometers distance from Municipal Town, the concerned Municipality must be taken into account and their consent or consultation atleast must be secured by the National Highways Authority. Raising these points, the learned counsel appearing for the petitioner has contended that the proposed location of the toll plaza in the said National Highways 220 ie., Dindigul – Kumuli National Highways is against the law, especially in the context of Rule 8(1) of the said Rules, therefore, Mandamus as sought for in this Writ Petition may be granted, he contended.

4/12



W.P(MD)No.27026 of 2022

WEB COPY

6.On the other hand, Mr.P.Karthik, learned standing counsel appearing for the respondents 2 and 3 has submitted that, insofar as Rule 8(1) of the said Rules is concerned, no doubt, the executing authority or concessionaire cannot establish a toll plaza beyond a distance of 10 kilometers from a Municipal or local town area limits. However, the executing authority, for reasons to be recorded in writing, locate or allow the concessionaire to locate a toll plaza within a distance of 10 kilometers of such Municipal or local town area limits, but in no case within 5 kilometers of such Municipal or local town area limits.

7.Relying upon the proviso, the learned standing counsel would contend that invoking the said proviso, as there has been a necessity to locate the toll plaza within 10 kilometers but beyond 5 kilometers of the Municipal limit from Theni Municipal Town, the proposed location has been selected, he contended. The reason for selecting such a location to locate the toll plaza has been explained by the respondents in the additional affidavit filed by them, where they have stated in paragraphs 4 and 5 to the following effect:



W.P(MD)No.27026 of 2022

WEB COPY

'4.I humbly submit that the reasons for location the toll plaza within ten kilometers of Municipal or local town area limits are as follows:

'i. There are four Municipal Towns viz., Chinnamanur, Uthamapalayam, Cumbum and Gudalur continuously after toll plaza towards Kumili side which are less than five kilometers between each of the adjacent Municipality limits and therefore whenever the toll plaza is shifted towards kumili side, it will be with less than five kilometers range from the Municipal limit of the adjoining town.

ii. Initially the toll plaza was propose at Km 89+893 which is 3.07 km from the nearest Municipal limit of Chinnamanur, by considering the minimum distance of 5 km from the Municipal limit the proposed toll plaza has to be shifted to km 87+893. But there is one Village Kottur with its built up area extending for nearly one km from km 89.043 km to 89.043 and therefore locating toll plaza at km 88.043 just near the built up area may not be appropriate. By exploring the possibility of setting up of toll plaza it is proposed to be located at km 83+943 due to minimum additional land acquisition and avoiding built up areas.

The same was approved by the Chairman, National Highways Authority of India, Delhi.

5.It is respectfully submitted that in regard to para 1, 2 and 3 of grounds, it is submitted that after duly obtaining the permission from the competent authority the location of the toll plaza at Upparpatti has been finalized as per the rule framed in determination of fee Rules 2008 in sub-Section (1) of Section 8, wherein it is stated as below:

8(1). 'Location of toll piazza:

The executing authority or the concessionaire as the case may be shall establish a toll plaza beyond a distance of 10 kilometers from a Municipal or local town area limit.



W.P(MD)No.27026 of 2022

WEB COPY

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 10 kilometers of such Municipal or local town area limits, but in no case within five kilometers of such Municipal or local town area limits.'

8.Relying upon these averments made in the additional affidavit filed in support of their contention, learned standing counsel would submit that there has been a special reason why the authorities cannot locate any toll plaza beyond the present location till the end of Kumuli, because consecutively there are four Municipal Towns viz., Chinnamannur, Uthamapalayam, Cumbum and Gudalur are located, therefore this is the only location where toll plaza can be located, therefore, the proviso to Rule 8(1) of the said Rules has been invoked and the reasons also had been recorded, as has been stated in paragraph 4 of the said additional affidavit, he contended.

9.We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.



W.P(MD)No.27026 of 2022

WEB COPY

10.No doubt, under Rule 8(1) of the said Rules, toll plaza cannot be located within 10 kilometers of the Municipal limit and the proposed location at Upparpatti is certainly within 10 kilometers from Theni Municipal Town, but at the same time, under the proviso to Rule 8(1) of the said Rules, for any reasons to be recorded the executing authority can permit the concessionaire to locate such toll plaza within 10 kilometers, but beyond 5 kilometers of Municipal limit and the reasons to be recorded must have the satisfaction of the stakeholders concerned, where they have given the reasons that there are four Municipal Towns viz., Chinnamanur, Uthamapalayam, Cumbum and Gudalur continuously after toll plaza towards Kumili side which is less than 5 kilometers between each of the adjacent Municipality limits and therefore, whenever the toll plaza is shifted towards Kumili side, it will be with less than 5 kilometers range from the Municipal limit of the adjoining Town.

11.These reasons have been specifically mentioned by the respondents, as has been extracted herein above, which compelled them to select this location at Upparpatty to locate the toll plaza, which is of course, within 10 kilometers distance from the Municipal Town of Theni, but beyond 5 kilometers. Therefore, it is a case where the authority can invoke the



W.P(MD)No.27026 of 2022

proviso to Rule 8(1) of the said Rules which they have invoked here, of course, with reasons as stated supra.

12.Insofar as the ground that has been raised by the learned counsel appearing for the petitioner that whenever such a decision is taken by the National Highways Authority, invoking the proviso to Rule 8(1) of the said Rules, a concurrence must be obtained from the Municipal authority concerned, this Court feel that no such condition has been imposed under the Rule, especially, under Rule 8(1) of the said Rules. The language used in the proviso has made it very clear 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 10 kilometers of such Municipal or local town area limits, but in no case within 5 kilometers of such Municipal or local town area limits.

13.Therefore, there has been only one prohibition even under the proviso to Rule 8(1) of the said Rules is that no toll plaza under any circumstances can be established within 5 kilometers of the Municipal area, but at the same time, in normal circumstances, such a toll plaza even though cannot be established within 10 kilometers from Municipal area, but



W.P(MD)No.27026 of 2022

WEB COPY

for special reasons to be recorded in this regard when proviso to Rule 8(1) of the said Rules is invoked such toll plazas can be established within 10 kilometers from Municipal limit, but not within 5 kilometers of the Municipal limit. Since that was only the controlling effect as has been provided under the proviso to Rule 8(1) of the said Rules, the said ground raised by the petitioner cannot be countenanced, therefore, for all these reasons, we feel that the Mandamus sought for by the writ petitioner cannot be issued, hence, the Writ Petition fails and accordingly, it is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
02.04.2024

NCC : Yes
Index : Yes
ps

10/12



W.P(MD)No.27026 of 2022

WEB COPY

To

- 1.The Commissioner,
Represented by the Government of India,
The National Highways Authority of India,
Ministry of Road Transport and Highways,
New Delhi.
- 2.The Regional Officer,
The National Highways Authority of India,
Government of India,
Ministry of Road Transport and Highways,
2nd & 3rd Floor, Vijay Krsihna Plaza,
No.1, Lake Area,
Madurai Main Road,
Mattuthavani,
Madurai – 625 007.
- 3.The Regional Project Director,
The National Highways Authority of India,
Government of India,
Ministry of Road Transport and Highways,
Plot No.3, Surya Towers Second Floor,
East 1st Street, K.K.Nagar,
Madurai – 625 020.



WEB COPY



W.P(MD)No.27026 of 2022

R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.P(MD)No.27026 of 2022

DATED : 02.04.2024

12/12