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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-16146-2026 (O&M)
Date of decision: 14.09.2026

DR. RANJANA GUPTA

....Petitioner

Versus

UNION OF INDIA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI
HON'BLE MR. JUSTICE PRAVINDRA SINGH CHAUHAN**

Present: - Mr. P.S.Khurana, Advocate and
Ms. Sukhmandeep Kaur, Advocate and
Mr. Anurag Doomra, Advocate
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate and
Mr. Shashwat Sharma, Advocate and
Mr. Adhiraj Sood, Advocate
for respondent Nos.2 and 3.

Mr. Avichal Sharma, Advocate
for respondent No.4.

JASGURPREET SINGH PURI, J. (Oral)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India praying for issuance of a writ, order or direction especially in the nature of *certiorari* seeking quashing of notification dated 30.09.2025 (Annexure P-9) issued under Section 3(A) of National Highways Act, 1956 as well as notification dated 06.03.2026 (Annexure



P-10) issued under Section 3(D) of the National Highways Act, 1956 (hereinafter called as “National Highways Act”) being illegal, arbitrary, discriminatory, unconstitutional and cryptic.

2. A further prayer has also been made for quashing of the order dated 03.03.2026 (Annexure P-13) passed by respondent No.3 i.e. the Project Director, National Highways Authority of India, PIU, Bathinda, whereby the issue raised by the petitioner *qua* the proposed toll plaza to be established on National Highway-07 at a distance of 4.75 Kms. from the municipal limits of Municipal Committee, Fazilka was rejected, whereas its establishment at the said location is contrary to Rule 8 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008.

ARGUMENTS ADVANCED BY LEARNED COUNSEL FOR THE PETITIONER:

3. Mr. P.S. Khurana, learned counsel appearing on behalf of the petitioner while giving facts of the case submitted that the respondent-National Highways Authority, which is the executive authority for the construction of the National Highways under the National Highways Act, acquired some stretch of land in District Fazilka. The notifications under Sections 3(A) and 3(D) were issued in the year 2022 for the purpose of the construction of the National Highway. In the aforesaid notifications, the land of the petitioner was also acquired to the extent of 3 kanal 12 marlas apart from the land being acquired from various other land holders. The purpose of acquisition was for building, widening, maintenance, management and operation of NH-07 on the stretch of land from 76.500 km



to 114.400 km and on the stretch of land from 66.800 km to 82.300 km in the District of Fazilka in the State of Punjab. Consequent upon the aforesaid acquisition made by the Government of India, an award No.1/2023 dated 16.03.2023 (Annexure P-2) was passed. Compensation was also received by the petitioner to the tune of Rs.35,43,932/- subject to her right of seeking enhancement of compensation and the same was duly credited in the account of the petitioner on 28.08.2023.

4. Learned counsel further submitted that there is no dispute with regard to the aforesaid acquisition done for the purpose of construction, maintenance and widening of National Highway because the aforesaid is a sovereign function of the State and that any land can always be acquired for the purpose of establishing and construction of National Highways. So far as the aforesaid acquisition is concerned which culminated into the passing of the award dated 16.08.2023 (Annexure P-2) and receiving of the compensation by the petitioner in the year 2023, there is no dispute with regard to the same by the petitioner.

5. Learned counsel for the petitioner further submitted that the grievance of the petitioner pertains to the subsequent notifications dated 30.09.2025 (Annexure P-9) and 06.03.2026 (Annexure P-10) respectively, whereby additional land was acquired by the respondents for the completion of the aforesaid project. He submitted that after the earlier acquisition, some land of the petitioner was encroached upon for which no award was passed and no compensation was paid and in order to rectify the aforesaid mistake, when the impugned notifications (Annexure P-9 and P-10) were issued by



the respondent-State, the same was also acquired. At the time when earlier notification was issued, the respondent authorities had entered upon the land of the petitioner and had started construction thereon beyond the limits of the land acquired. He further submitted that under the later impugned notifications i.e. Annexure P-9 and P-10, land of the petitioner was also acquired for which an award had already been passed and the said acquisition included the two marlas of acquired land regarding which there is no dispute that now acquisition has been made.

6. Learned counsel further submitted that the action of the respondent was not in accordance with law and was in violation of National Highways Authority Act, 1956 as well as the National Highways Fee (Determination of Rates and Collection) Rules, 2008, apart from various other illegalities committed by the respondent. Therefore, the petitioner had filed the present petition challenging the aforesaid notifications and the actions of the respondent, who had established the toll plaza at a place where the same could not have been established, being in violation of the aforesaid rules.

7. Learned counsel raised four fold arguments. The first argument was that the action of the respondent in establishing a toll plaza was in violation of the second proviso to Rule 8(1) of the National Highways Rules because admittedly the toll plaza is situated at a place, which is about 4.75 kms from the boundary of the municipal limits of District Fazilka. Learned counsel referred to second proviso to Rule 8(1), which provides 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 kilometers from such limits, primarily for the use of the residents of such municipal or town area, the fee plaza may be established within the municipal or town area limits or within a distance of five kilometers from such limits. He submitted that in this way, in case the toll plaza is to be established within the area of five kilometers from the municipal or town area limits then by virtue of the aforesaid second proviso to sub-Rule (1) of Rule 8, the same can be constructed but for that purpose, a decision had to be taken by the executive authority in this regard. He submitted that in the present case, no such decision had been taken by the executive authority and therefore, the establishment of the toll plaza was in violation of the aforesaid Rules. He submitted that consequent upon the violation of the aforesaid provision, the toll plaza could not have been established and therefore, the action of the respondent of doing the same was in violation of the aforesaid rules.

8. Raising a second argument, learned counsel for the petitioner submitted that after the acquisition process was completed pertaining to the second acquisition pursuant to the impugned notifications (Annexure P-9 and P-10), in respect of which although an award had already been passed, the remaining land of the petitioner, measuring about 2 acres and 3 kanals, was not acquired in subsequent notifications and which is still in possession of the petitioner, had become a land locked area having no proper access. The same had not only reduced the utility of the land but also caused prejudice to the petitioner. He submitted that since the petitioner had a vested right to have access to the aforesaid land, which



had been left from acquisition, the impugned notification is liable to be set aside.

9. While raising a third argument, learned counsel for the petitioner submitted that when the aforesaid acquisition was carried out by way of the impugned notifications (Annexure P-9 and P-10), it was incumbent upon the respondent to have provided an adequate passage to the aforesaid land which was left out from acquisition. Therefore, the aforesaid third argument raised by learned counsel for the petitioner in fact overlaps with the second argument raised by him.

10. The fourth argument submitted by learned counsel for the petitioner was that the Detailed Project Report (hereinafter called the “DPR”) (Annexure R-2/1) as well the Standing Finance Committee (herein after called the “SFC”) Report (Annexure R-2/2) are also liable to be set aside to the extent that the toll plaza had been established in violation of the second proviso to Rule 8(1). He submitted that the aforesaid DPR (Annexure R-2/1) and SFC Report (Annexure R-2/2) are not in accordance with law in view of the fact that neither the same were published by the respondents nor the same were made available to the general public at large and therefore, on this ground also, the same are liable to be set aside as being illegal.

ARGUMENTS ADVANCED BY LEARNED SENIOR COUNSEL FOR RESPONDENT NOS.2 AND 3:

11. On the other hand, learned senior counsel for respondent Nos.2 and 3 - National Highways Authority of India while meeting the arguments

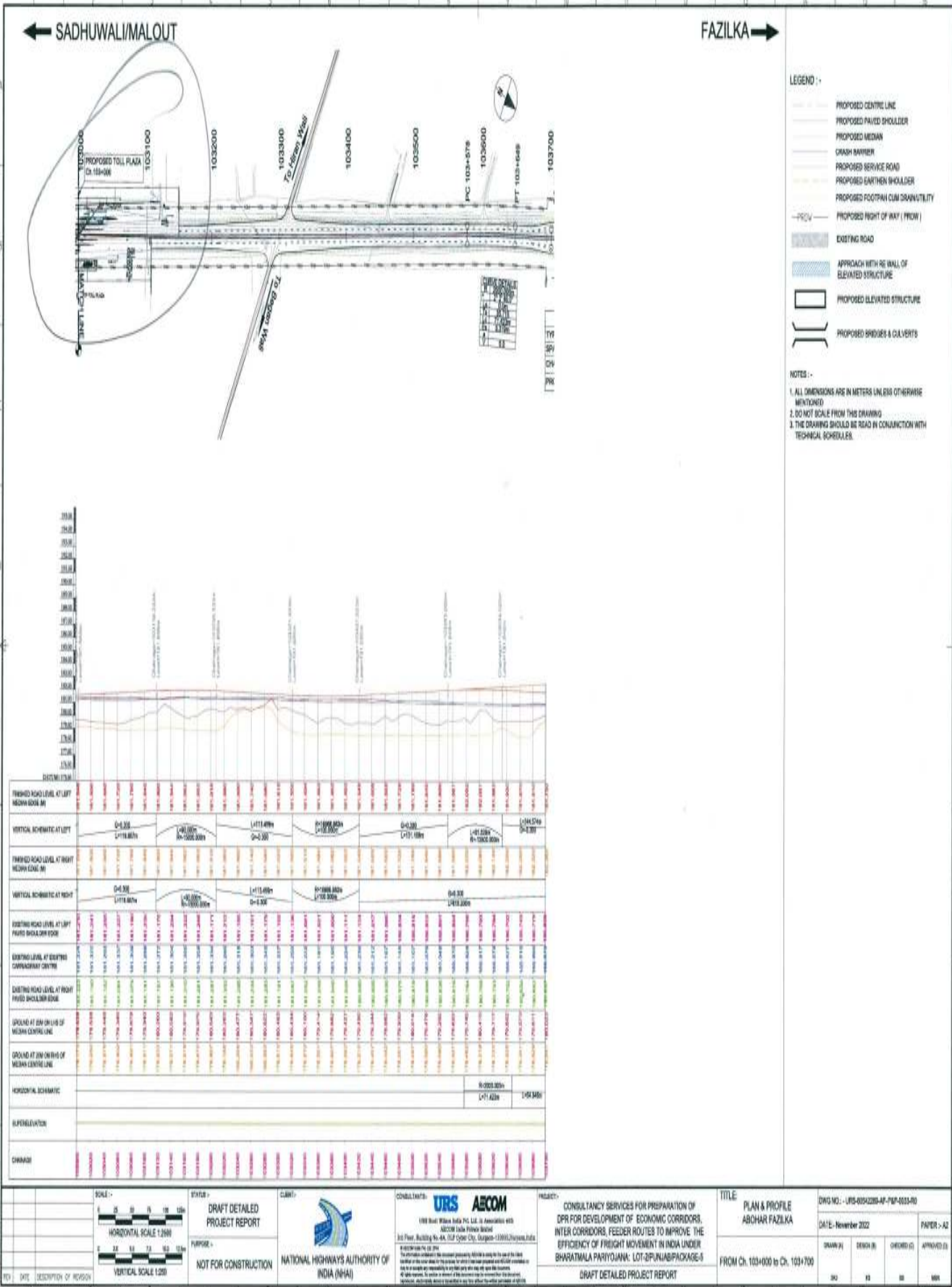


raised by learned counsel for the petitioner submitted that the present petition is liable to be dismissed on the ground of mis-statement and concealment of facts by the petitioner. He submitted that the petitioner had stated in para No.12 of the petition that the draft report of December 2022 clearly showed that proposed toll plaza was beyond ten kilometers from the municipal limits of Fazilka and not at the place where it is being established now whereas the factual position is that the toll plaza was fixed at 103+000 kms. from its inception i.e. at the time when the original DPR was prepared and the initial notification for the year 2022-2023 under Section 3(A) of the National Highways Act was issued, pursuant to which the award was passed and compensation was paid to the petitioner. He further submitted that even the aforesaid DPR (Annexure R-2/1) and the SFC Report (Annexure R-2/2), respectively, were not challenged by the petitioner in the present writ petition and that now a separate application has been moved seeking amendment of the writ petition for challenging the same.

12. While further elaborating his arguments pertaining to aforesaid mis-statement and concealment made by the petitioner, he referred to the aforesaid DPR (Annexure R-2/1) at page No.358 of the paper book, prepared in the year 2022, wherein it is very clear that the aforesaid toll plaza was proposed to be incorporated at 103+000 kms. The aforesaid DPR is a document attached by the respondents in the reply and the relevant portion of the aforesaid page No.358 is reproduced as under:-



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13. He further submitted that so far as the SFC Report dated 03.03.2023 (Annexure R2/2) is concerned, the same also reflects the aforesaid position of toll plaza being at 103+000 (8 lanes). The relevant portion of the aforesaid SFC Report, which is at page No.377 of the paper book is also reproduced as under:-

11	Length of new alignment (bypass & realignment)	2.840+4.960+10.380+6.380=24.560 km
12.	Bus Bay/Passenger shelter	12 Nos/ 12 Nos
13.	Truck Lay-bye	2 Nos.
14.	Toll Plaza	1 No. at km 103+000 (8 lanes)
15.	Traffic projection (2022	14,960 PCUs

14. Learned senior counsel for respondent Nos.2 and 3 submitted that at the initial stage itself when the acquisition was undertaken in the year 2022, the DPR as well as the SFC Report had specifically indicated the location of the toll plaza at 103+000 kms, which is the location of the existing toll plaza for which the land was acquired. However, at that stage, the petitioner neither raised any objection nor challenged the acquisition in this regard by filing a writ petition. He submitted that additional land was required for the further development of the National Highways and the same was acquired by way of impugned notifications (Annexure P-9 and P-10). Learned counsel submitted that the petitioner has now sought to raise objections with regard to the location of the toll plaza as though the said issue has arisen for the first time in the present acquisition.

15. Learned senior counsel further submitted that apart from the above, even before the acquisition was undertaken by way of the impugned notification (Annexure P-9), a legal notice dated 05.05.2026 (Annexure R-2/6) was served by the petitioner to which a reply dated 04.08.2025



(Annexure R-2/8) was duly given by the respondent-National Highways Authority of India to the petitioner. In the said reply, details with regard to the location of the toll plaza were provided and reference was also made to the second proviso to Rule 8(1) stating that the aforesaid section of National Highways falling within five kilometers of the MC limit includes a greenfield bypass comprising of 2 ROBs, 6VUPs, 1LVUP, 1 SVUP, 3 Minor Bridges and a trumpet interchange at the terminal end and that these facilities were intended to serve the residents of Fazilka District, including those residing within five kilometers of the MC limit. However, the petitioner had not challenged the aforesaid reply to the legal notice although detailed information was provided to the petitioner. The petitioner has now raised the aforesaid grievance before this Court by filing the present writ petition alleging that there had been a violation of second proviso to sub-Rule (1) of Rule 8. He submitted that once the material in the form of reply to the legal notice issued by the respondent to the petitioner is available on the record and even in the reply filed by the respondent in the present writ petition, the aforesaid material has been so stated and disclosed, it cannot be said that there has been any violation of the second proviso of sub-Rule (1) of Rule 8, in view of the law laid down by the Hon'ble Supreme Court in **National Highways Authority of India and Others Versus Madhukar Kumar And Others (2022) 14 Supreme Court Cases 661.**

16. He further submitted that so far as the argument raised by learned counsel for the petitioner that there has been a violation of second proviso to sub-Rule (1) of Rule 8 is concerned, the same is untenable and misconceived. He submitted that there is marked difference between the



first proviso to sub-Rule (1) of Rule 8 and second proviso to sub-Rule (1) of Rule 8 and this distinction has been elaborately discussed by the Hon'ble Supreme Court in the aforesaid judgment in ***National Highways Authority of India's case (supra)***, wherein it was held that for the purposes of the second proviso to sub-Rule (1) of Rule 8, no reasons were required to be incorporated. However, it was also observed that a decision has to be taken by the executive authority and undoubtedly the executive authority is the National Highways Authority of India. He submitted that at the time when DPR was prepared vide Annexure R-2/1 and the SFC approved the aforesaid DPR, the same was based on detailed material and incorporated the aforesaid location of the toll plaza, which was to be at a place 4.75 kms from the outer limits of the municipal or town area limits. In this way, there is no illegality with regard to the action taken by the executive authority, which is the National Highways Authority of India. However, so far as a separate order with regard to decision being taken is concerned, the same is not on the record as no separate decision was taken. While referring to the aforesaid judgment of the Hon'ble Supreme Court he submitted that even if no separate decision was taken, the action based on the material placed on the record should not be set aside by this Court in view of the judgment of the Hon'ble Supreme Court. Further referring to the aforesaid judgment, he submitted that the absence of a separate order recording such decision is not fatal in nature because the Court while exercising its powers can always look at the material available on the record, including any document as well as the pleadings before the Court. In this regard, he referred to Para Nos.73, 81, 82, 88 to 91 of the aforesaid judgment.



17. Learned senior counsel for respondent Nos.2 and 3 further submitted that initially when the acquisition was made, some more land was required for the widening of the aforesaid National Highway and for that purpose, there was a requirement for acquisition of 34 more marlas of land. At the time when the initial acquisition took place and the construction of toll plaza was underway, inadvertently, some construction was made on two marlas of land, which belonged to the petitioner, which was not acquired and even the National Highways Authority does not dispute the same as some rooms etc. had been constructed on the aforesaid two marlas of land, which belonged to the petitioner. However, this mistake was rectified in the subsequent notifications issued vide Annexure P-9 and P-10, which included the aforesaid two marlas of land as part of the total 34 marlas of land acquired. Thus, the aforesaid two marlas of land on which the rooms of the toll plaza had been constructed were also included in the subsequent acquisition. This acquisition, which included the aforesaid two marlas of land was undertaken in the years 2025 and 2026 and is impugned in the present writ petition. He submitted that award had already been passed in the aforesaid acquisition and since the land of the petitioner had already been compulsorily acquired for the purpose of construction/widening etc. of the National Highway which included the toll plaza as per the initial plans contained in the DPR and SFC, no ground is made out by the petitioner to seek any intervention by this Court.

18. Learned senior counsel further, while referring to the reply filed by the respondents, submitted that the construction of the toll plaza building, which is situated at 103+000 kms commenced in April 2024 and was



substantially completed by December 2024. In this way, the entire construction of the toll plaza had already been substantially completed and there is now no occasion for the petitioner to challenge the aforesaid siting of the toll plaza as being in violation of the second proviso to sub-Rule (1) of Rule 8.

19. He further submitted that even otherwise, the legal notice issued by the petitioner prior to the filing of the present petition was duly replied to by the respondents, wherein details with regard to adherence to the second proviso to sub-Rule (1) of Rule 8 were provided and the action of the respondent is, therefore, in accordance with law.

20. Learned senior counsel also submitted that so far as the argument raised by learned counsel for the petitioner with regard to the remaining un-acquired land of the petitioner having become landlocked and there being no passage thereto is concerned, he has specific instructions from the respondent-National Highways Authority of India to state with regard to the area which is in possession of the petitioner and has not been acquired as yet and *qua* which the petitioner is raising the grievance that the access to the aforesaid land shall be provided by the National Highways Authority of India by providing a 20-metre open space. Therefore, the aforesaid grievance raised by learned counsel for the petitioner stands satisfied. He submitted that consequently, the present writ petition is liable to be dismissed.

CONSIDERATION OF ARGUMENTS RAISED BY LEARNED COUNSELS FOR THE PARTIES:

21. We have heard learned counsel for the parties at length.



22. The primary dispute pertains to the siting of the toll plaza with which the petitioner is aggrieved. Notifications were issued in the years 2022 and 2023 for the purpose of acquisition of a large chunk of land including some land of the petitioner. The acquisition was completed in the year 2023 and the petitioner undoubtedly received compensation with regard to the same.

23. Dealing with the second and third submissions made by learned counsel for the petitioner pertaining to the fact that the petitioner had no access to the remaining land of the petitioner which was not even acquired, the same would not survive at this stage in view of the fact that learned senior counsel for respondent Nos.2 and 3 has specifically stated that they will provide access to the aforesaid land of the petitioner by providing a 20 meter open space.

24. We are of the considered view that considering specific statement made by learned senior counsel for respondent - National Highways Authority of India and even otherwise also, in case any grievance still subsists, the petitioner can always invoke the provisions of Section 28 and 29 of the Control of National Highways (Land and Traffic) Act, 2002 and move an application before the competent authority in accordance with law. Therefore, the aforesaid grievance of the petitioner would not sustain.

25. Dealing with the first argument raised by learned counsel for the petitioner with regard to the setting up of the toll plaza at a distance of 4.75 kms. from the outer limits of municipal or town area, it would be relevant to reproduce the provision, which had been relied upon by learned counsel for the petitioner. Rule 8(1) of the National Highway Fee



(Determination of Rates and Collection) Rules, 2008 is reproduced as under:-

"(1) The executing authority or the concessionaire, as the case may be, shall establish a [fee 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 [fee 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 [fee plaza] may be established within the municipal or town area limits or within a distance of five kilometres from such limits."

26. A perusal of sub-Rule (1) of Rule 8 so provides that the executing authority or the concessionaire as the case may be, shall establish a fee plaza beyond a distance of ten kilometers from the municipal or local town area limits. Therefore, as per the aforesaid provision, there is a bar on establishing a fee plaza within a distance of ten kilometers from the municipal or local town area limits. However, there are two exceptions to the aforesaid. Firstly, the first proviso provides that the executing authority may for reasons to be recorded in writing, locate or allow the concessionaire to locate a fee plaza within a distance of ten kilometers of such municipal or



local town area, but in no case within five kilometers of such municipal or local town area limits. In this way, as per the aforesaid first proviso, a fee plaza can be located within the distance of ten kilometers, but in any case, it cannot be located within five kilometers of the aforesaid municipal or local town area limits. Therefore, as per the first proviso to sub-Rule (1) of Rule 8, the toll plaza cannot be established within five kilometers from the aforesaid municipal or local town area limits.

27. However, there is a second proviso as well to the aforesaid Rule 8(1), which operates independently from the first proviso. In the second proviso, it is so provided that in certain circumstances, 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 kilometers from such limits primarily for the use of the residents of such municipal or town area, then the fee plaza may be established in the town area limits or within the distance of five kilometers for such limits. In other words, the second proviso to Rule 8(1), which operates independently of the first proviso provides for another exception to the main provision contained in Rule 8(1). As per the second proviso, the toll plaza can also be established within five kilometers from the aforesaid limits, subject, however, to the conditions, which are *sine qua non* for invoking the application of the aforesaid proviso. One of the primary conditions, which needs to be satisfied as per the aforesaid second proviso and which is *sine qua non* and mandatory is that in case the toll plaza is to be established within a distance of five kilometers from the aforesaid limits then the same



has to be primarily for the use of the residents of such municipal or town area.

28. The law with regard to the scope of the aforesaid Rule 8(1) and both the provisos has been discussed in detail by the Hon'ble Supreme Court in *National Highways Authority of India's case (supra)*. The Hon'ble Supreme Court has observed that there is a marked difference between the first proviso and the second proviso. As a matter of general principle, a toll plaza cannot be established within ten kilometers from the municipal or town area limits as per Rule 8(1). This is subject to two different exceptions, which are provided in two different provisos. With regard to the scope of the second proviso, as discussed in the aforesaid judgment, it was so held that where a bar is imposed on the executive authority and the concessionaire to locate the toll plaza, which must be more than ten kilometers from the municipal or the town area limits, no power is conferred upon the concessionaire to locate the toll plaza within the distance of ten kilometers. Therefore, the executive authority is the only authority which can locate or allow the concessionaire to locate the toll plaza within the distance of ten kilometers but not less than five kilometers. In the present case, undoubtedly, the DPR (Annexure R-1/2) and SFC Report (Annexure R-2/2) are documents prepared/approved by the executive authority, which is the National Highways Authority of India and therefore, the decision with regard to the location of the toll plaza was taken by the executive authority and not by the concessionaire. It was further observed that discretionary power was conferred upon the executive authority and that the executive authority must record reasons in writing at the time when it



exercises the power to locate or permit the concessionaire to locate the toll plaza within the distance as already mentioned.

29. Categorical observations were made with regard to the scope and applicability of the second proviso to Rule 8(1). It was observed that the requirement for construction of a section of the National Highway, permanent bridge, bypass or tunnel within a municipal or town area limits is that the same should be primarily for the use of residents of such municipal or town area limits and if the aforesaid requirement is fulfilled, then the embargo contained in Rule 8 would cease to apply. It was further observed that where a section of the National Highway, permanent bridge, bypass or tunnel is located within five kilometers of the municipal or town area limits then the later part of the proviso would apply thereby permitting the toll plaza to be located within a distance of five kilometers from such limits.

30. Therefore, the test so observed by the Hon'ble Supreme Court based upon the second proviso to Rule 8(1) was primarily that if the toll plaza is to be located within five kilometers of the aforesaid limits, it has to satisfy the test that it is meant primarily for the use of the residents of such municipal or town area limits.

31. It was further held that if the construction of a section of the National Highway is made within five kilometers of the municipal or town area limits and the construction is primarily for the use of residents of such municipal or town area, the toll plaza may be set up within the aforesaid five kilometers of such limits. It was observed that unlike the first proviso, the second proviso does not contemplate that the reasons for exercising the discretionary power are to be recorded in writing. It was further observed



that there is no specific provision in the second proviso to Rule 8(1) requiring reasons to be recorded. It was in this context that the Hon'ble Supreme Court held that for the purpose of applying the second proviso to Rule 8(1), there is no requirement of recording reasons.

32. Further elaborating the scope of aforesaid second proviso, the Hon'ble Supreme Court also observed that indeed some decision has to be taken according to the situation, which warrants locating the toll plaza in exercise of the powers under second proviso. Undoubtedly, it was observed that a decision must be taken. However, at the same time, while further considering the aforesaid issue with regard to such decision, it was also observed that to demonstrate the application of mind, there must be material and even in the absence of reasons recorded as such, there must be proper pleadings supported by material, unless the facts are not in dispute. In this way, it was so observed that although a decision has to be taken by the executing authority but at the same time, in the facts and circumstances of the case, if there is material available on record and the same is brought out through pleadings, then unless the facts are not in dispute, such material would demonstrate the application of mind. Relevant portion of the aforesaid judgment of Hon'ble Supreme Court contained in para Nos. 73, 82, 88, 89, 90 and 91 are reproduced as under:-

“73. The Constitution does not contemplate any public authority, exercising power with caprice or without any rationale. But here again, in the absence of the duty to record reasons, the Court is not to be clothed with power to strike down administrative action for the mere reason that no reasons are to be found



recorded. In certain situations, the reason for a particular decision, may be gleaned from the pleadings of the authority, when the matter is tested in a court. From the materials, including the file notings, which are made available, the court may conclude that there were reasons and the action was not illegal or arbitrary. From admitted facts, the court may conclude that there was sufficient justification, and the mere absence of reasons, would not be sufficient to invalidate the action of the public authority. Thus, reasons may, in certain situations, have to be recorded in the order. In other contexts, it would suffice that the reasons are to be found in the files. The court may, when there is no duty to record reasons, support an administrative decision, with reference to the pleadings aided by materials.

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82. Therefore, a perusal of the second proviso [to Rule 8(1)] leaves us in no doubt, whatsoever that the statutory requirements to apply the second proviso and to locate a toll plaza within the municipal or town area limits, is the factum of construction of a section of the national highway, inter alia, within the municipal or town area limits, subject to the only condition that it must be primarily for the use of the residents of such municipal or town area. It would be noticed further that, unlike the main Rule and the first proviso, the second proviso does not indicate as to, in whom, the power to locate the toll plaza under the second proviso, stands vested with. In other words, unlike the main Rule and the first proviso [to Rule 8(1)], the rule-maker has not indicated the person or authority, who is to decide. Lastly, we must notice that, unlike the first proviso, the



second proviso does not contemplate that the reasons for exercising the discretionary power, are to be recorded in writing.

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88. Having regard to the provision in question viz. Rule 8, we are of the clear view that second proviso to the Rule is an instance of the proviso representing a substantive provision in itself. In other words, while the Rule proclaims a total embargo against the location of the toll plaza within ten Kilometres of the municipal or town area limits, the second proviso permits the location of the toll plaza even within the municipal limits or town area limits. Even if it were treated as constituting an exception to the Rule, full effect must be given to its mandate.

89. As far as the question, as to who can take a decision under the second proviso, we would think, a conspectus of Rule 8, that, in the absence of any express reference to the power to take a decision, within the meaning of the second proviso [to Rule 8(1)], being lodged with any particular body, the said power must be found vested with the executive authority. We say this for the reason that, some person must, indeed, take the decision that the situation warrants locating the toll plaza, in exercise of the power under the second proviso. We certainly cannot lodge that power with a concessionaire. The rule-maker has conferred the power on the concessionaire, expressly when it declared in Rule 8, that the concessionaire may, apart from the executing authority, locate the toll plaza beyond 10 km from the municipal or town area limits. The power under the first proviso, is conferred only upon the executing authority. Having regard to the nature of the



power viz. to locate the toll plaza, in complete contradiction with the mandate of the Rule, within the municipal area, inter alia, we hold that, the power to take decision under the second proviso, is lodged with the executing authority.

90. *To invoke the second proviso to Rule 8(1), what is required is, the existence of the conditions, as explained.*

91. *However, a decision must be taken. It must be taken by the competent authority. The authority, we have found is the executing authority. It must apply its mind and be convinced that a section of the national highway, inter alia, is constructed within the municipal or town area limits. This is a pure question of fact. Secondly, it must conclude that the said construction is "primarily" or "mainly" for the "use" of the residents of the municipal limits. This is again a factual matter. We may also find that the second proviso does not compel the authority to locate the plaza within the municipal or town area limits. It is a matter of discretion to be exercised, no doubt, taking into consideration the maximisation of toll collection also and avoiding of leakage of toll, bearing in mind the fact that the concessionaire is permitted to collect the toll only for the period of the concessionaire agreement under Rule 16. To show application of mind, there must be material. Even in the absence of reasons, recorded as such, there must be proper pleadings with materials, unless facts are not in dispute."*

33. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid ***National Highways Authority of India's case (supra)***, in the facts and circumstances of the present case, it is a case where the second



proviso alone would apply. The toll plaza is admittedly situated at 4.75 kms from the municipal or town area limits. The decision with regard to the location of the toll plaza was taken way back in the year 2022-23 when the initial acquisition took place and DPR (Annexure R-2/1) and the SFC Report (Annexure R-2/2) were prepared at that point of time. In this way, the decision to locate the toll plaza at 103+000, which is actually 4.75 kms from the outer limits of the town area, was taken in the year 2022 and the acquisition was made accordingly. This acquisition was never challenged by the petitioner at any point of time. Further, there is no such decision placed on record by the respondents to show the reasons as to why the toll plaza was required to be situated at 4.75 kms. However, in the pleadings of the present writ petition as well as in the reasons mentioned vide Annexure R-2/8, the reasons have been discussed elaborately. The relevant portion of the aforesaid Annexure R-2/8 at para No.2(iv) reads as under:-

“2(iv.) It is further submitted that the aforementioned section of NH falling within 5 kilometers of MC limit includes a greenfield bypass comprising of 2 ROBs, 6 VUPs, 1 LVUP, 1 SVUP, 3 Minor Bridges and a trumpet interchange at the terminal end. These facilities are intended to serve the residents of Fazilka District, including those residing within 5 km of the MC limit.”

34. A perusal of the aforesaid would show that it had been informed to the petitioner that a section of National Highway falling within five kilometers of MC limit included a greenfield bypass comprising of 2 ROBs, 6 VUPs, 1 LVUP, 1 SVUP, 3 Minor Bridges and a trumpet interchange at the terminal end and it was specifically stated that these



facilities were intended to serve the residents of Fazilka District including those residing within 5 kms of the MC limit. The relevant portion of the pleadings made by the respondents in the reply filed by them also reads as under:-

“B(b) That thereafter the various communications took place between the petitioner and answering respondents and vide letters/orders dated 21.06.2025 and 04.08.2025, the petitioner was informed that the present location of toll plaza is in accordance with the detailed project report, concession agreement and the same is in accordance with the National Highways Fee (Determination of Rates & Collection) Rules, 2008 (hereinafter referred to as '2008 Rules'), as the section of National Highway falling within the municipal limits including the Greenfield by-pass comprising of 2 ROBs, 6 VUPs, 1 LUP, 1 SVUP, 3 minor bridges and a trumpet inter-change at the terminal end and all these facilities are for the use of residents of the district Fazilka and those residing within the municipal limits. It was further stated that the location has been planned to minimize inconvenience to local population and to ensure uninterrupted strategic movement. The copies of letters/order dated 21.06.2025 and 04.08.2025 are annexed herewith as Annexure R-2/7 & R-2/8, respectively.”

35. In view of the above, it is clear that even if no specific decision was taken in the year 2022, the respondents from the pleadings and the reasons specified in Annexure R-2/8 as mentioned above, have successfully been able to satisfy this Court that the siting of the toll plaza within five



kilometers, as per the aforesaid proviso was primarily intended for the use of the residents of the area.

36. Apart from the above, it is an admitted position that substantial construction of the toll plaza has already taken place and as per learned Senior counsel for respondent Nos.2 and 3, the construction of the toll plaza is to be completed in July, 2027 and the National Highway is also near completion and is to be made operational.

37. Therefore, this Court is of the view that the aforesaid arguments raised by learned counsel for the petitioner that there has been a violation of the second proviso to Rule 8(1) would not be sustainable, particularly when at this stage, the National Highway is almost complete and the toll plaza is also nearing completion, as per learned senior counsel for respondents No.2 and 3, a substantial portion of the toll plaza has already been completed. We are of considered view that it would not be in the interest of justice to halt the entire process as the project is admittedly for the development of the nation and the acquisition was made in exercise of the sovereign function of the State. We are, therefore, satisfied that based upon the material placed on record either by way of pleadings or by way of Annexure R-2/8, the requirement of the second proviso to Rule 8(1) stands substantially complied with and therefore, the same cannot be treated as fatal in view of the aforesaid reasons.

38. The notifications, which have been challenged before this Court, vide Annexure P-9 and P-10, are subsequent notifications, which include the land of the petitioner including the two marlas of land, which the petitioner had been agitating. However, the said two marlas of land on



which a part of the toll plaza had inadvertently been constructed but which had not been acquired by the State, has now been acquired by the State and an award has been passed. Therefore, no such grievance would survive *qua* the same.

39. It is directed that in case the petitioner is not satisfied with the open space being allotted for providing access, he shall be at liberty to move an application before the concerned authority as per the law. In case any such application is moved, the competent authority shall decide the same in accordance with law within a period of three months thereafter.

40. So far as fourth argument raised by learned counsel for the petitioner that DPR (Annexure R-2/1) and SFC Report (Annexure R-2/2) were not published or made available to public at large is concerned, there is nothing on record to show any provision of law which mandates for the same and therefore, this argument is not sustainable.

41. Considering the aforesaid facts and circumstances, this Court is of the considered view that no ground is made out for interference by this Court. Consequently, the present writ petition is dismissed. Interim order dated 22.05.2026 stands vacated.

CM-16927-2026

1. This application has been filed and has been listed today for the first time after the entire arguments were addressed by learned counsel for the parties. The application seeks amendment of the main writ petition to challenge the aforesaid DPR (Annexure R-2/1) and SFC Report (Annexure R-2/2), respectively. This Court is of the considered view that issues raised by the petitioner in the main petition have already been considered and

decided while deciding the main writ petition. The aforesaid DPR (Annexure R-2/1) and SFC Report (Annexure R-2/2), respectively, were of the year 2022 when the initial acquisition took place. The petitioner did not challenge the same at that stage and instead accepted the compensation awarded. In view of the above, this Court is of the considered view that at this stage, no such amendment can be allowed. The application is accordingly dismissed.

2. Pending miscellaneous application(s), if any, shall stand disposed of.

(JASGURPREET SINGH PURI)
JUDGE

14.09.2026
P. Seth

i) Whether speaking/reasoned?
ii) Whether reportable?

(PRAVINDRA SINGH CHAUHAN)
JUDGE

Yes/No
Yes/No