

GAHC040002582022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C) 93/2022

1: Biri Mangju and Anr.
S/o Shri Biri Takap,
Village Mangju, Circle Yangte,
PO/PS Palin,
District Kra Daadi, Arunachal Pradesh.
Mobile No. 6909420754

2: Biri Tadak
S/o Shri Biri Tayi

Village Ania Koyar

Circle Yangte
PO/PS Palin

District Kra Daadi
Arunachal Pradesh.
Mobile No. 897464026

VERSUS

1: THE STATE OF AP and 5 Ors.
Represented by the Secretary (Land Management), Govt. of Arunachal Pradesh,
Itanagar 791111

2: The Chief Engineer
Rural Works Department (Western Zone)
Itanagar

3: The Executive Engineer
RWD Jamin Division
Govt. of Arunachal Pradesh
District Kra Daadi

Arunachal Pradesh

4:The Deputy Commissioner
Palin
District Kra Daadi
Arunachal Pradesh
Govt. of Arunachal Pradesh

5:Tai Tajik
Prop of M/s RTT Enterprises C Sector
Opp GMTD BSNL Office
PO/PS Itanagar 791111

6:The Secretary (RWD)
Govt. of Arunachal Pradesh
Itanaga

Advocate for the Petitioner : Tabit Tapak

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NANI TAGIA

ORDER

Date : 08-08-2022

Heard Mr. T. Tapak, learned counsel for the petitioners. Also heard Mr. D. Kamduk, learned Standing counsel for the Land Management Department representing respondent no. 1 and Mr. G. Tarak, learned Standing counsel for the RWD representing respondent nos. 2, 3 & 6 as well as Mr. I. Riram, learned Additional Senior Government Advocate for the respondent no. 4.

2. The petitioners have filed this writ petition with the following prayer, which reads as under:

(i). As to why, Direction/order should not be passed by setting

aside and quashing the illegal execution of PMGSY Road (Pradhan Mantri Gram Sadak Yojna) from the portion of private land of the petitioners vide Package No. AR/14/05/062 (C/o HSH BRTF road to Yangte- Jhome PWD Road- Palin Block Boundary (Full Stage) which is being executed through Executive Engineer, Rural Works Division, Jamin, Govt. of Arunachal Pradesh.

(ii). As to why, Direction/order should not be passed for disposal of the following written representations;

- a. Representation, dated 24.05.2019 which is before the Chief Engineer, RWD (WZ) Itanagar.
- b. Written complaint, dated 10.07.2020, which is before the Deputy Commissioner, Kra-Daadi District, Arunachal Pradesh.
- c. Written representation, dated 03.12.2021 and 03.02.2022 before the Deputy Commissioner, Kra-Daadi District Arunachal Pradesh for preparation of Damage Report and compensation.

3. Though notice of motion in the writ petition was issued on 21.03.2022, no counter-affidavits have been filed by any of the respondents.

4. In the light of the prayer made in the writ petition by the petitioners, the learned counsel for the petitioners, Mr. Tapak has argued that the respondent authorities along with the contractors have

caused huge damage to the private lands of the petitioners while constructing a PMGSY road over their land, which was not there in the original DPR prepared and the construction of PMGSY road over the land of the petitioners have been done by realigning the road contrary to the original DPR prepared. Since the petitioners have suffered immense loss of their property because of the illegal construction of PMGSY road over the land of the petitioners contrary to the original DPR prepared and also without paying any compensation to the petitioners, the learned counsel for the petitioners prays for an interim order to be passed today, stating that neither the State respondents have responded to the writ petition by filing a counter-affidavit in the writ petition nor this Court has passed any interim order protecting the property of the writ petitioners, wherein, the respondent authorities along with the contractors are constructing the PMGSY road, causing immense damage to the land of the petitioners.

5. While considering the prayer made by the learned counsel for the petitioners, on perusal of the writ petition, the petitioners' land could not be identified from the averments made by the petitioners in the writ petition. Faced with such a situation, the learned counsel for the petitioners have produced before this court, 2 (two) letters. Both the letters referred to above, are quoted hereinbelow::

(i) A Letter dated 25.03.2022, written to the Superintendant of Police, Palin, District Kradaadi, by the inspector, T. Mai, Officer-in-charge of Police Station Palin. Which is a Police enquiry report submitted on the F.I.R. lodged by the petitioners, dated 03.12.2021,

against the Executive Engineer, RWD, Palin, and;

*The Superintendent of Police
Palin, District Kra-Daddi (AP)*

Dated Palin the 25th March, 2022.

*Sub: **Police Enquiry Report.***

*Ref: **FIR against EE RWD, Palin, dated 3rd December, 2021.***

Sir,

With reference to the above, it is to inform you that I have conducted an enquiry pertaining to the allegations of damaged to private properties of the complainants Shri Biri Mangju and Shri Biri Tadak located at Yangte village by the road construction agency RWD and local contractor.

The HSH BRTF road to Yangte-Jhome under PMGSY package no AR/14/05/061 is being executed by M/S T T enterprises. But it was alleged that the work was not being executed according to the original DPR. Instead, they deviate the actual alignment of the road which pass through the private properties of the complainants causing damaged to the paddy field, Jhum cultivated land, irrigation cannel, Subuk (traditional fishing point) and also Hollock nursery.

During my visit, I have examined the sites and found out the following properties damaged by the executing agencies (photos enclosed):-

- (1) Rice paddy field of Shri Biri Tadak*
- (2) Irrigation cannel of Shri Biri Tadak*
- (3) Barb wire/wooden fences of Shri Biri Tadak*
- (4) Jhum paddy field of Shri Biri Tadak*
- (5) Traditional fishing point (SUBUK) of Shri Biri Mangju*
- (6) Hollock nursery/Barb wire of Shri Biri Mangju*

During further enquiry, it was learnt from the complainants that the actual route alignment for the construction of the road did not pass through their private lands as per the original DPR. The route alignment of the original DPR actually runs through a hanging bridge over Pani river, a cardamom garden and finally below a middle school. But the construction agency diverted the route through their private properties which resulted in properties being damaged. They also declared that no compensation was received by them. Despite their repeated appeal to the concerned authorities, no one from the executing agencies or administration pay heed to their complaints.

One LPC was issued from DC Ziro dated 28th July 2016 (enclosed) to Shri Biri Nitum S/O Shri Biri Tadak, was found in their possession. The LPC was issued against an area known as Peying Hapa within which the damaged paddy field is also located. However, no any other land documents are found in their possession with regards to their remaining land properties.

Therefore, I am submitting herewith the enquiry report based on my verification of the sites for further necessary action from your end please.

Enclosed:-

(1) Photo copy 10nos
(2) LPC 01nos
(3) Sketch map 01nos
(4) Complaint letter 01nos

yours faithfully,

Sd/-
(Inprs) T Mai

OC PS Palin
Officer-In-Charge
Police Station, Palin
KraDaadi District

(ii). A letter dated 29.03.2022, written to the Deputy Commissioner, Palin Kradaadi District by Superintendent of Police, Palin Kradaadi District, vide No. KDAPP/CR-46/2021-22/1464, which is the letter forwarding the enquiry report.

**GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE SUPERINTENDENT OF POLICE
KRA-DADDI DISTRICT, PALIN**

No. KDAPP/CR-46/2021-22/464

Dated Palin the 29th March' 2022

To,

The Deputy Commissioner
Palin, KraDaadi District,
Arunachal Pradesh

Sub:- **Forwarding of an enquiry report.**

Sir,

Enclosed please find herewith an enquiry report along with the required documents as enclosed pertaining to a complaint lodge at Paling PS against EE, RWD, dated 03rd Dec' 2021.

It is to mention that the undersigned on receipt of the said complaint (copy enclosed) endorsed the matter to OC PS Palin to conduct an enquiry into it as the nature of complaint required an enquiry. The enquiry report submitted has been perused and it is learnt from the enquiry report that the private lands of the complainant Shri Biri Mangju, vill. Mangju, Yangte, PO/PS Palin and Shri Biri Tadak, vill. Ania Koyar, Circle – Yangte, PO/PS – Palin have been damaged owing to the construction of HSH BRTF road to Yangte -Jhome PMGSY package No. AR/14/05/061 road.

Further, as per the enquiry report such damages as mentioned above occurred owing to the deviation of route of the said road package No. AR/14/05/061 from the original DPR. Also, such deviation of route, if any, from the original DPR was not communicated to the complainant. Again, it is also learnt that the said complainants had also approached your good office for the said matter on previous occasions and subsequently an order was also passed from your good office to the EE, RWD, Palin to take appropriate action on the matter (copy enclosed).

Hence, submitting the enquiry report for your kind perusal and necessary action on this matter. It is requested that the matter may be discussed with the concerned dept and the contractor concerned for necessary action on the damages caused on the private lands of the above-mentioned complainants.

Submitted pls.

Enclosed:

- 1. Copy of Enquiry Report along with Photographs.*
- 2. FIR (complainant letter) along with supporting documents submitted.*
- 3. Previous order of EAC (JUD), Palin KraDaddi.*

Yours Faithfully

Sd/-

(Dusu Kaling) APPS

Superintendent of Police

Palin, KraDaddi Distt. (A.P)

6. A perusal of the above 2 (two) letters, would indicate that PMGSY road constructed under PMGSY package no AR/14/05/061 is executed by M/s T. T. Enterprises and the road has been constructed over the plot of lands of the petitioners causing damages to the lands of the petitioners, as indicated in the aforesaid letters, which is a construction undertaken by the Contractor as well as the respondents authorities in deviation of the original DPR prepared. The original DPR prepared for construction of the PMGSY road appears to have not contained any proposal for construction of the PMGSY road over the land of the petitioners. The 2 (two) letters by the Officer-in-charge, Palin Police Station as well as Superintendant of Police, Palin, Kradaadi District, referred to hereinabove, would go to lend credence to the arguments advanced by Mr. Tapak, learned counsel for the petitioners. Since the right to property is a constitutional right guaranteed under Article 300A of the

Constitution of India, which provides that no property of a person shall be deprived of save by authority of law and in the instant case, it appears, if the contention of the writ petitioners are to be believed, that the construction of PMGSY road over the land of the petitioners have been made in deviation of the earlier original DPR prepared and that too without paying any compensation to the petitioners, I am of the view that the writ petitioners have made out a *prima-facie* case for passing of an interim order.

7. Accordingly, in the light of the facts narrated hereinabove, in the interim, till the next date fixed, it is provided that (i). the possession of the petitioners' land shall not be disturbed and no further damage be caused to the land of the petitioners, and (ii). the respondent no. 4 herein, the Deputy Commissioner, Palin, Kradaadi District, shall cause a verification on the contention raised by the petitioners and in the course of verification made, if it is found that the construction of a PMGSY road over the land of the writ petitioners have been done contrary to the original DPR prepared by deviating the alignment of the road proposed in the original DPR, the Deputy Commissioner, Kradaadi District, Palin, shall take steps and start the process for acquisition of that part of the land of the petitioners, on which the PMGSY road have been constructed, for the purpose of payment of adequate compensation in accordance with law.

8. List it after 4 (four) weeks, for filing of the counter-affidavit.

JUDGE

Comparing Assistant