

GAHC040000122024



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

Case No. : WP(C)/5/2024

M/s DD Hydro Power Developer Private Ltd and Anr
office near Directorate of Eco and Statistic Office, RK Mission, Itanagar represented
by its Director Shri Nilly Likha Tabo

VERSUS

The State of AP and 3 Ors
represented by Secretary, Land Management, Govt of AP, Itanagar 791111

2:The Deputy Commisioner
Age: 0
Occupation :

3:The Additional Deputy Commissioner
Age: 0
Occupation :

4:The Sub Divisional Officer
Age: 0
Occupation

Advocate for the Petitioner : K Eshi

Advocate for the Respondent : GA (AP)

**BEFORE
HONBLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 05-01-2024

Heard Mr. D. Mazumdar, the learned senior counsel assisted by P. Borah, the learned counsel for the petitioner. And also heard Mr. S. Tapin, the learned Senior Government Advocate for the respondents No. 2, 3 and 4 and Mr. D. Kamduk, the learned Standing Counsel, Land Management Department for respondent No. 1.

2. The petitioner before this Court is aggrieved by the Order dated 29.12.2023, issued by the Deputy Commissioner, Lower Subansiri District, Ziro. By the said impugned Order, the petitioner was restrained from carrying out further work in respect of the Keyi Hydro Project works, which is under taken by the petitioner.

3. It is submitted by the learned senior counsel for the petitioner that the petitioner was awarded pursuant to the Memorandum of Agreement (MOA) between the Government of Arunachal Pradesh and the petitioner for execution of Keyi Hydro Electric Project. The petitioner undertook the work for construction of the said hydro project. The MOA was entered between the petitioner and the

Government on 19 May'2010 and subsequently, there has been an amendment to the said MOA by the parties. In terms of the said MOA, the work has been undertaken and the land for the said purpose was acquired by the Government and adequate compensation thereon has been deposited by the petitioner. However, on the basis of the report stated to have been submitted by the Additional Deputy Commissioner, Yachuli, the impugned order dated 29.12.2023 came to be issued.

4. The learned senior counsel for the petitioner submits that because of the stoppage of the work by the said impugned Order, the petitioner is incurring a losses of Rs. 5,00, 000/-(Rupees Five Lakhs) per day and there is no means to compensate the petitioner as on date. Being aggrieved, he preferred a representation dated 02.01.2024 before the Deputy Commissioner, Lower Subansiri District, Ziro, Arunachal Pradesh which however, has remained pending. It is further submitted that similar representation by the local villagers has also been preferred before the Deputy Commissioner, Ziro. It is submitted that the Deputy Commissioner, Ziro could not have issued the impugned executive Order without proper notice to the petitioner and without affording any opportunity of being heard as the said work was executed by the petitioner pursuant to the MOA being executed between the Government of

Arunachal Pradesh and the petitioner.

5. Mr. S. Tapin, the learned Senior Government Advocate submits that he will complete his instructions and prays for short date. Similar prayer has also been made by the learned Standing Counsel for the Land Management Department.

6. Having heard the learned counsel for the parties and upon careful perusal of the writ petition, it is seen that the impugned Order dated 29.12.2023, appears to have been issued on the basis of the report dated 29.12.2023, received from the Additional Deputy Commissioner, Yachuli. The said report is enclosed to the writ petition at page -130. The report is dated 29.12.2023. In the said report a chronology of the development of the Keyi Hydro Project at Pistana Circle is narrated. From the said report, it is seen that there were orders passed by the Deputy Commissioner, Ziro directing the Additional Deputy Commissioner, Yachuli to conduct public hearing and re-assessment of the Keyi Hydro Electric Project, wherein the land is categorised as the community land for the Shally, Pistana and Ambam Panchayat. As per the said report, it is seen that the Deputy Commissioner, by the order dated 02.02.2023 directed for fresh field survey for the proposed Hydro Power Project by inviting all stakeholders in the area.

7. The Additional Deputy Commissioner, Yachuli in his report suggested that the public hearing be done by the Deputy Commissioner himself as few public are not satisfied with the earlier public hearing. On the basis of the said report, the impugned order dated 29.12.2023, was issued by the Deputy Commissioner directing the stoppage of work by the petitioner.

8. After having heard the learned counsel for the parties and upon careful consideration of the submission made and also upon careful perusal of the pleadings on record, it is seen that against the impugned Order dated 29.12.2023, a representation is shown to have been filed before the Deputy Commissioner, Ziro by the petitioner vide his representation dated 02.01.2024.

9. A perusal of the representation reveals that the petitioner has urged before the Deputy Commissioner, Ziro to reconsider and recall the impugned Order passed. As on date, as it is submitted that the representation is pending disposal, this Court is of the considered view that without expressing anything on merit this writ petition can be closed at this stage without issuing notice. The Deputy Commissioner, Ziro will hear the petitioner on the said representation and pass a reasoned Speaking Order.

10. The Deputy Commissioner, Ziro may call for any particulars as may be found necessary from the petitioner and upon such a notice being put to the petitioner, it will furnish the same immediately. Deputy Commissioner, Ziro will thereafter, pass a reasoned Speaking Order as expeditiously as possible within the outer limit of 30(thirty) days from the date of receipt of a certified copy of this order. Although in the impugned Order dated 29.12.2023, issued by the Deputy Commissioner, Ziro, there is no reference of Section 133 Cr.P.C, however, from the tenor of the order, it appears to be an order passed by the Deputy Commissioner, Ziro in exercise of his powers under Section 133 Cr.P.C. If that be so then the Deputy Commissioner, Ziro may also proceed and pass any appropriate order under the said provision of law upon due notice to the petitioner.

11. It is made clear that till the disposal of the representation by Speaking Order as directed above, the impugned Order dated 29.12.2023, shall not be given effect to.

12. In terms of above, the writ petition accordingly, stands disposed of.

13. A copy of this order be marked to the office of the learned Senior Government Advocate as well as the learned Standing Counsel for the Land Management Department for due

communication to the concerned respondents.

JUDGE

Comparing Assistant