

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 826/2024

Nazir Ahmed

.....Appellant(s)/Petitioner(s)

Through: Mr. Arshad Ahmad Malik, Advocate

Vs

Union of India and Anr.

..... Respondent(s)

Through: Mr. Sunny Mahajan, Advocate for R-2.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER (ORAL)

24.12.2024

1. The petitioner in the instant petition filed under Article 226 of the Constitution has sought the following reliefs:
 - (i) Commanding the respondents to release the amount of compensation in favour of the petitioner for the damaged building as per the market rates.
 - (ii) Any other benefit to which this Hon'ble Court deems the petitioner entitled to may also be granted in favour of petitioner in circumstances of the case.
2. The background facts, under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition, are that the respondents herein executed the construction work of National Highway-44 at Krawah Banihal District Ramban by use of heavy machinery as also the respondents after doing earth cutting of the area kept the same unattended during the winter season for a considerable period of time without there being any drainage system put in place by the respondents

for the rain water and surface water from the catchment areas due to melting of snow, which rain water and surface water percolated downhill side in the property of the petitioner and caused immense damage to the foundation of the said property, besides developing cracks therein and in the process caused damage to the residential house and the private educational institution/school owned and possessed by the petitioner herein existing on the uphill side of the road at the site, whereafter the petitioner in this regard, approached the office of the Deputy Commissioner, Ramban and Police Station, Ramban, whereupon the Addl. Deputy Commissioner, Ramban vide letter No. CLA/NH-44/2020/126 dated 20.03.2020 directed the Executive Engineer, PWD (R&B) Division to furnish a detailed report after making a spot inspection, in compliance whereof, a report came to be submitted on 06.08.2020, wherein it came to be reported that the construction work of National Highway-44 on uphill side of the area by way of Deep Gulla Earth cutting and also by deploying heavy machinery and thereafter kept at the site unattended during the winter season as also during the COVID-19 lockdown without making any drainage arrangements for rain/surface water from the catchment area on account of melting of snow in the area, which caused water logging for a considerable period of time and consequently the said water percolated to downhill side into the foundation and the constructions of the petitioner causing immense damage to the same, which damage needs immediate rectification to avoid any further damage to the structures and that the construction agency be directed to construct the drainage system at the particular

location immediately to avoid water logging so that the structures could be saved from further damages.

It is being further stated that besides the inspection conducted by the Engineering Department, the Revenue Department as also the concerned Police Station inspected the site and authenticated the damages caused to the property of the petitioner and a detailed report in this regard came to be submitted to the Addl. Deputy Commissioner, Ramban, whereupon the respondent 2 herein in terms of letter dated 21.08.2020 deputed one Consultancy namely, SMEC Private Ltd. for inspection of the site, as a consequence whereof the said Consultancy Agency upon making a spot inspection submitted a report on 04.09.2020 opining therein that there exists a problem caused by water pounding in the Highway constructions adjacent to the structures mentioned and that there is evidence of water infiltration through permeable ground intermediate between the cutting and the buildings.

It is being next stated that after waiting for an action in the matter by the respondent 2 herein and upon its failure, the petitioner approached the grievance cell of the Lieutenant Governor of the Union Territory and also submitted various representations to the various departments including the Deputy Commissioner, Ramban, who forwarded the case of the petitioner to the Sub Divisional Magistrate, Banihal for an inquiry and that of late, a committee came to be constituted by the orders of the Addl. Deputy Commissioner, Ramban through Tehsildar concerned for assessing the damage caused to the property of the petitioner, which committee visited the spot on 03.01.2023 and submitted a report in this

regard to the Addl. Deputy Commissioner, Ramban, in which report, it came to be, *inter alia*, opined that the immoveable property of the petitioner has suffered around 10% to 15% damage and that the property stands renovated to some extent by the petitioner herein.

It is being lastly stated by the petitioner that despite the aforesaid facts and circumstances, the respondent 2 failed to redress the grievance of the petitioner and did not compensate the petitioner for the damage suffered by his property on account of acts of omission and commission by the respondents, necessitating filing of the instant petition.

3. **Objections** to the instant petition have been filed by the respondent 2 herein, wherein it is being pleaded that “M/s Navyuga Engineering Co. Ltd.” has not been impleaded as a party being the executing agency of the project, though it is not denied in the reply that the respondent 2 herein undertook the work for construction of the four laning of the National Highway by the said executing agency.

It is being further stated that though a legal notice from the counsel for the petitioner was received by the respondent 2 herein on 19.12.2023, the said legal notice was replied stating therein that the buildings in question are situated far away from the NHAI ROW on downhill side and that the alleged cracks in the buildings might have occurred due to construction of the building without taking proper design parameters and that the claim of the petitioner is without any basis, based on wrong facts.

Heard learned counsel for the parties and perused the record.

4. It is significant to mention here that during pendency of the instant petition, the petitioner herein filed an application for impleadment of the

Deputy Commissioner, Ramban as party and having regard to the respective pleadings of the parties, inasmuch as the nature of controversy involved in the matter, the Deputy Commissioner, Ramban is impleaded as a party being a proper party to the lis.

5. Perusal of the reply filed by the respondents to the petition indisputably reveals that the respondents have not denied the report of the committee constituted by the Tehsildar concerned at the instance of Addl. Deputy Commissioner, Ramban in order to ascertain the damage claimed by the petitioner herein to have been caused to his property, which committee upon spot inspection had observed that the damage to the property of the petitioner had been caused on account of construction of the National Highway undertaken by the respondents, more particularly in view of keeping the earth cutting work undertaken by the respondents unattended for a considerable period of time during the winter season as also during lockdown of pandemic COVID-19.

Having regard to the aforesaid position obtaining in the matter, said report of the aforesaid committee can safely be said to have been admitted by the respondents to be factually correct.

6. Law in respect of an immovable property is no more *res integra* being indisputably a constitutional right under Article 300-A of the Constitution, having been held consistently by the Constitutional Courts to be akin to a fundamental right to life, the inaction of the respondents herein having acted casually in the matter of the construction of the National Highway, though not directly, but indisputably through an executing agency and this vicariously liable for the acts of omission and

commission of its executing agency, cannot shun their responsibility towards the petitioner qua his immovable property having suffered a damage therein and as such, render the respondents herein liable to compensate the petitioner.

7. Viewed thus, for what has been observed, considered and analysed hereinabove, the instant petition is **disposed of** as under:

- (i) The Deputy Commissioner shall offer a hearing to the respondent 2 herein in respect of the quantum of damage assessed by the committee in its report dated 09.08.2023 within a period of two weeks from the date a copy this order is produced by either of the parties and thereafter within two weeks have the damage assessed by the committee in its report re-assessed while taking into consideration the stand of the petitioner herein.
- (ii) Upon such re-assessment, the respondent 2 herein shall pay the said re-assessed amount of compensation to the petitioner herein within four weeks' time thereafter alongwith interest at the rate of 6 % P.A from the date of damage till its payment.

(Javed Iqbal Wani)
Judge

Jammu
24.12.2024
Karam Chand/Secy.

Whether the order is speaking:	Yes/No
Whether the order is reportable:	Yes/No