

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

Case:- OWP No. 1412/2018
a/w connected applications

**V. K. Sambhyal, age 62 years,
S/o Lt. Thakur Krishan Singh, R/o Jyotirpunj, Village
Challani, Panchayat Aitham, Block-Nagrota, Jammu**

.....Petitioner(s)

Through: Ms. Garima Gupta, Advocate

Vs

- 1. State of J&K Th. Commissioner Secretary
PWD (R&B), PWD Office, Lok Nirman Bhawan, Rail
Head Complex, Jammu;**
- 2. National Rural Road Development Agency (NRRDA)
No. 15, NBCC Tower, 5th Floor, Bhikaji, Cama Place
Delhi;**
- 3. Chief Engineer, PMGSY JKRRDA, Jammu
JKPCC Building 4th Floor Panama Chowk, Jammu;**
- 4. Deputy Commissioner, Jammu, Deputy Commissioner
Office, Wazarat Road, Jammu.**

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG.
Ms. Chetna Manhas, Advocate vice
Mrs. Monika Kohli, Sr. AAG.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER(ORAL)
(24.03.2025)

01. The instant petition has been preferred by the petitioner, namely, V K Sambhyal, wherein a direction has been sought against the respondents to repair the Jabta-Challani road (L052) constructed in Block Nagrota, Panchayat Aitham, District and Tehsil Jammu under Pradhan Mantri Gram Sadak Yogjna (for brevity, "**PMGSY**").

02. The grievance of the petitioner, which has been projected in the instant petition is that on 15.08.2000, the Hon'ble Prime Minister of India had announced a centrally sponsored Scheme, namely, PMGSY with an objective of providing road connectivity through good All-Weather roads to all rural

habitation with a population of more than 500 persons by the year 2007 and under the said Scheme, the respondents were required to construct and maintain the roads for a period of 05 years, which is evident from Standard Bidding Document for PMGSY for construction and maintenance, which explicitly provides as under:-

"Scope of Bid

The employer as defined in the Appendix to ITB invites bids for the construction of Works and their maintenance for five years, as described in these documents and referred to as "the works"

03. As per the petitioners, the respondents had constructed a 5 KM-Jabta-Challani road (L052) in Block Nagrota, Panchayat Aitham, District and Tehsil Jammu under PMGSY and the said road was completed on 30.06.2016, which was under five years' maintenance w.e.f. 01.07.2016.

04. It is a specific case of the petitioner that within a year, the said road got damaged due to poor quality/sub-standard material used for construction of the said road and on account of its misuse by plying heavy vehicles by those engaged in the illegal sand mining from Sardar Nallah and this is the precise reason that the road got damaged and has not been repaired on the day the said petition came to be preferred by the petitioner. Feeling aggrieved of the same, the petitioner approached the respondents by way of an application and according to the petitioner, the respondents filed a detailed reply on 07.03.2017, whereby they have admitted that the road has been damaged and the contractor has been directed to do the repair work. Since the repair work was not carried out well in time, the petitioner feeling aggrieved of the same, again approached the respondents and the respondents filed yet another reply on 04.09.2017 by informing the petitioner that the contractor has been directed to maintain the road. In spite of the assurance extended by the respondents by way of a detailed

reply, the needful was not done and the petitioner again informed the respondents on 28.05.2018 via e-mail that the road has not been repaired and feeling aggrieved of the same, the petitioner has preferred the instant petition.

05. The record reveals that various compliance reports/status reports have also been filed on behalf of respondent Nos. 1 to 3. The latest status report on behalf of respondent Nos. 1 to 3 was filed on 01.08.2024, in which a specific stand has been taken by the said respondents that since the five years' defect liability period of the road is over and a detailed estimate for providing and laying a layer of 20 mm thick open graded premix carpet along with allied works was prepared and submitted to the Superintending Engineer, PMGSY Circle, Jammu vide Executive Engineer, PMGSY Division, Jammu's Office Letter No. EE/PMGSY/J/2280-83 dated 30.07.2021 and further submitted to the Chief Engineer, PMGSY Jammu vide Superintending Engineer, Circle Jammu Letter No. PMGSY/J/3667-69 dated 23.08.2021 for an amount of ₹ 236.10 lacs.

06. The respondent Nos. 1 to 3 while filing the latest compliance report have also submitted that the contract for the above noted work came to be awarded in favour of Sh. Abdul Qayoom Shan by the Superintending Engineer, PMGSY Jammu vide NIT No. SE/PMGSY/J/1179-87 dated 16.06.2022 and the contractor has completed the work on 06.07.2023. The respondents are on affidavit, stating that the condition of the road is good and traffic-worthy as on date.

07. Another status report has also been filed on behalf of the Deputy Commissioner, Jammu on 28.10.2024, wherein the concerned Deputy Commissioner has stated that the road is in good condition and traffic-worthy

and with a view to substantiate the stand, the said respondent has also placed on record various photographs, evidencing the factum of the road being in good condition and traffic-worthy.

08. The record further reveals that the objections also stand filed on behalf of respondent No. 4 on 20.10.2023, wherein the said respondent has taken a preliminary objection with regard to the maintainability of the instant petition, which raises disputed questions of facts and cannot be gone into while exercising writ jurisdiction and also in absence of alleged accrual of cause of action for maintaining the instant writ petition.

09. The respondent No. 4, i.e., Deputy Commissioner, Jammu has also stated that the road in question was repaired in the month of July, 2023 and was in good shape, which has been confirmed by placing on record the various photographs and pursuant thereto, the latest status report has also been filed by the said respondent on 28.10.2024 (mentioned supra).

10. Learned counsel for the petitioner has also drawn the attention of this Court to the status report filed by the respondent Nos. 1 to 3, in which, the said respondents have taken a specific stand that the Director Mining was requested to take action against the illegal mining vide Communication dated 16.08.2017 and pursuant thereto, the matter was taken up with the Additional District Development Commissioner, Jammu along with the photographs, but nothing has been done so far.

11. Learned counsel for the petitioner further submits that the root cause for the damage of the said road periodically is due to illegal mining and in spite of admission on part of the respondents, no action till date has been taken by the respondents.

12. With a view to buttress her arguments, learned counsel for the petitioner, Ms. Garima Gupta has placed reliance on the judgment of the Hon'ble Apex Court rendered in case titled, "*State of H P Vs. Umed Ram Sharma*, reported in *1986 AIR SC 847*", wherein at para-11, what has been held by the Hon'ble Apex Court, reads as under:-

"11. It appears to us that in the facts of this case, the controversy lies within a short compass. It is well settled that the persons who have applied to the High Court by the letter are persons affected by the absence of usable road because they are poor Harijan residents of the area, their access by communication, indeed to life outside is obstructed and/or prevented by the absence of road. The entire State of Himachal Pradesh is in hills and without workable roads, no communication is possible. Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication."

13. Heard learned counsel for the parties at length and perused the record.

14. After perusing the above-cited judgment relied upon by the learned counsel for the petitioner, this Court finds that the issue involved in the aforesaid case pertains to road connectivity and that the aforesaid judgment has come in the backdrop, wherein the residents of the hilly area were affected by the denial of the facility and non-availability of roads. In the context of residents in hilly areas, the Hon'ble Apex Court was of the view that access to roads is essential for their very survival, as it directly impacts their quality of life. There is no

quarrel with the observations made by the Hon'ble Apex Court in the aforesaid judgment that access to roads for communication in reasonable conditions is a constitutional right and denial of this access would violate the right to life, as laid down by the Constitution, but in the instant case, prayer made is limited to the extent of seeking a direction against the respondents to repair the said road, which according to the respondents, has already been done and the road is in good shape as per the stand taken by the respondents. Thus, the judgment relied upon by the learned counsel for the petitioner is not applicable to the case in hand.

15. Accordingly, this Court deems it proper to dispose of the instant petition, as the grievance of the petitioner stands already redressed.

16. Insofar as the issue, which has been raised by the petitioner that the said road was damaged periodically due to illegal mining is concerned, the petitioner will be at liberty to agitate the said issue before the appropriate forum, if so advised, as the relief, which has been claimed by the petitioner in the instant petition stands already redressed and the petitioner through the medium of the instant petition, cannot espouse the cause of public by enlarging the scope of instant writ petition, which has been preferred in his individual capacity. However, the petitioner will be at liberty to agitate the cause afresh, if cause of action is accrued.

17. *Disposed of* along with connected applications.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
24.03.2025
Ram Krishan