

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM**

Civil Suit No.35/2007

1. Rothangpuia,
S/o Chhawna (L)
Thingsulthliah, Mizoram.
 2. Lalchhuanga,
S/o Chalzawna,
Thingsuithliah, Mizoram.
 3. Lalzika Hnamte
S/o Thangdula,
Thingsuithliah, Mizoram.
 4. K.Lalduhawma,
S/o Chalthianga,
Thingsuithliah, Mizoram.
 5. R.Kapchhunga,
S/o Sena (L)
Thingsuithliah, Mizoram.
 6. Zahlira,
S/o Thuama (L)
Thingsuithliah, Mizoram.
- Plaintiff.

-Versus-

1. Union of India through the Secretary
To the Govt. of India,
Ministry of Shipping & Surface Transport,
New Delhi.
 2. Chief Engineer,
Project Pushpak, Mizoram,
C/o 99 APO
 3. Officer Commanding,
1604PNR COY
Transit Camp,
405 RMPL/74 RCC (GREF)
C/o 99 APO
- Defendants.

BEFORE

R.VANLALENA, Senior Civil Judge

For the Plaintiff	:	Shri L.H.Lianhrima, Advocate.
For the Defendant	:	Shri S.N.Meitei, Advocate.
Date of Judgment	:	19.04.2012

JUDGMENT AND ORDER

Dated 19.4.2012

The brief facts of the case leading to the filing of the instant suit as reflected in the plaint may be stated as belows:-

The plaintiffs are permanent resident of Thingsulthliah village in Mizoram and are belonging to Mizo Community of Scheduled Tribe. In the year 1953, while the villagers in Mizoram were ruled by Chiefs, each of the fathers of the plaintiffs approached the Chief of their village for allotment of lands for garden/cultivation. The Chief of the village Shri S.M.Vanhnuathanga allotted land to each of the father of the plaintiffs covering an area of 6(six) bighas each for the purpose of cultivation/garden land and the lands allotted to them had been looked after by each of them.

However, with the emergence of the Border Road Task Force (BRTF) at the said village, the said BRTF approached the then village authorities for giving lands of the present plaintiffs to them for the purpose of their establishment and promised the village authorities that they (BRTF) would level the land for public playground, church and school. At the same time, the BRTF authorities informed the village authorities that if they were not willing to part with the said lands, they will take possession of the lands by force. The defendants then forcibly occupied the said land from the year 1963 by putting up tents and continued the illegal occupation till date without paying any compensation. The fathers of the plaintiffs being illiterate and rustic villagers, they did not know what to do than to keep silent for such a number of years for fears of arrest by Khaki uniformed personnel. The plaintiffs had since then been deprived of the peaceful enjoyment of their respective lands and the benefits arising therefrom for such a number of years due to the forceful and illegal occupation of their lands by the Defendants from the year 1963 till date. The fathers of the present plaintiffs were simple villagers and uneducated and were under the belief that they could do nothing against the illegal occupation of their respective lands and left the matter without doing anything and died. However, belatedly, the plaintiffs realized that what was done to them by the defendants were wrong and illegal and their rights had been violated by the defendants thus approached this court for redressal of their grievances. The cause of action arose at Thingsulthliah village which is within the territorial jurisdiction of this court in the year 1963 and continues till date. The suit is filed bonafide and for the ends of justice.

The plaintiffs pray the following reliefs :

- a) Let a decree be passed declaring that Defendants have occupied the lands of the plaintiffs since 1963.
- b) A decree for payment of rental compensation commencing from the year 1963 till peaceful possession of the suit land is handed over to the plaintiffs.
- c) A decree in favour of the plaintiffs and against the Defendants.
- d) Any other reliefs to which the plaintiffs are entitled according to justice, equity and good conscience.

On the other hand, the Defendants contested the instant suit by filing their written statements stating that the suit is barred by the law of

limitation as the alleged occupation of the lands occurred in the year 1963 and the plaintiff belatedly filed the instant suit in the year 2007 without an application for condonation of delay, hence the suit may be dismissed in limine. They further stated that there is no cause of action, it is not maintainable in its present form and style, the suit is bad for non-joinder or/ and mis-joinder of necessary parties, it is not properly valued. The suit is not maintainable under the principles of stoppel, waiver and acquiescence. The plaintiffs have no locus standi to file the instant suit. The RAM PEKNA enclosed as Annexure 1-6 to the plaint did not disclose even remotely the name of even a single plaintiff not talking about the names of all the plaintiffs and therefore the suit is liable to be dismissed as the suit lands prima facie do not belong to the plaintiffs. The answering defendants challenged the authenticity of the documents annexed to the plaint. The defendants further submitted that the so-called Permit/Lal Pass were seemingly issued on the same day i.e. 15.10.1953 as is seen on the said annexed document by the same Lal but quite surprisingly the signatures of the said Lal Pass are quite different from one another which clearly indicates one thing that these documents are fabricated. As such the suit may be dismissed.

On the basis of their pleadings of the parties, the following issues were framed :

- a) Whether the present suit is maintainable in its present form and style ?
- b) Whether the plaintiffs have rights, title, and interest over the disputed land presently occupied by the defendants ?
- c) Whether the Limitation Act 1963 is applicable to the State of Mizoram ?
- d) Whether the Plaintiffs are entitled to the relief's claimed ? If so to what extent ?

The Plaintiffs examined two witnesses while the defendants examined three witnesses.

Issue No.1 :

Whether the suit is maintainable in its present form and style ?

The instant suit has been filed by six numbers of plaintiffs against the Defendants – Union of India & 2 other. It has been properly typed and duly verified. It has been accompanied by a copy of Notice given to the defendants under section 80 CPC 1908 and also accompanied by connected documents for annexures. At the time of institution of the instant suit, the plaintiffs could not deposit the required amount of court fees due to non-availability of court fees stamps with the authorized vendor and thus deposited only Rs.300/- of court fees. At the time of the institution of this suit, the court had allowed and ordered that the remaining required court fees be realized from the decretal amount. The plaint has not been accompanied by Affidavit, however, the defect of this could be condoned as the provisions of the Code of Civil Procedure 1908 has been applied and followed not in letter but in spirits as provided by the amended Mizoram Civil Courts Act. I find no defects in the plaint in its present form and style. Hence this issue is decided in favour of the plaintiffs.

Issue No.2:

Whether the plaintiffs have rights, title and interest over the disputed lands presently occupied by defendants ? The plaintiff No.1 namely Shri Rothangpuia in his examination in-chief deposed that during the period when the villages in Mizoram were ruled by Chiefs, the disputed lands were allotted by the Chief of Thingsulthliah village to the fathers of the plaintiffs for their garden/cultivation in the year 1953. The lands allotted to each of the plaintiff's father covered an area of 6 (six) bighas each. The land were thus cultivated crops. However, the respective lands of plaintiffs fathers had been illegally occupied by the defendants since the year 1963 without paying any rental compensation. In his cross examination, plaintiff No.1 stated that all the plaintiffs have not exhibited any Birth Certificate to show the names of their fathers. He also stated that no names of the plaintiffs have been reflected in any of the RAM IMPEKNA certificates. He further stated that all the plaintiffs did not have nay Heirship Certificate in respect of the claimed lands. He stated that he did not know whether the defendants BRTF have already obtained Permit/Pass for the said disputed lands. In his deposition before the court, the plaintiff No.1 repeated the statements which he had stated in his plaint and exhibited the following documents :-

Exhibit No.(P) 1,2,3,4,5,&6 are photo copies of RAM INPEKNA Certificates duly issued by the village Chief Shri S.M.Vanhnuaithanga to all fathers of the present plaintiffs.

Exhibit (P) NO.7 is a photo copy of Notice given under section 80 CPC 1908 served by the plaintiffs through counsels.

Pw.2 namely Shri SM Vahnuaithanga, the then Chief of Thingsulthliah village deposed before the court that in the year 1953 while he was the Chief of Thingsulthliah village (1) Shri Chalzawna F/o Rothangpuia, (2) Chri Chalthianga F/o K.Lalduhawma, (3) Shir Thuam F/o Zahlira (4) Shri Sena F/o R.Kapchhunga (5) Shri Chhawna F/o Lslchhunga and (5) Shri Thangdula F/o Lalzika Hnamte, all resident of the same village approached him for allotment of lands for cultivation/gardening within the village area and were thus allotted lands covering an area of 6 (six) bighas each by issuing RAM PEKNA Certificate and put his signature and seal of the Chief on 15.10.1953. However, the said lands were occupied by the defendants during the past few decades. He exhibited RAM PEKNA Certificates duly issued by him and marked as Exhibit (P) No.1,2,3,4,5 & 6 and Exhibit (P)-1 (a), 2(a), 3(a),4(a), 5(a) & 6(a) are his signatures.

In his cross examination, he stated that he had signed his examination-in-chief on affidavit at his residence at Thingsulthliah village. He also stated that he could not recollect the day and date on which he issued the RAM INPEKNA Certificate in favour of all the plaintiffs and stated that he could not remember the person who explained to him the content of the examination-in-chief on affidavit. He further stated that the contents of Exhibit (P) No.106 were not written by him. In his re-examination, Pw 2 stated that he gave his signature to the examination-in-chief on affidavit after fully explained the contents of it.

On the other hand, the deposition of all the defendants witnesses (Dw) stated that the disputed lands were occupied by the BRTF (defendants) on the strength of a Temporary Permit issued by the concerned authority vide Pass No.2 of 1970 under Memo EP.23/R/70/122 dated 10.9.1970 which was initially for a period upto 31.12.1971. But the said Pass was later extended for another three years from 25.1.1973 vide Memo No.DLR.35/73/15 dated 25.1.1973 and this Permit was further extended till 31.12.1980 vide Order the Government of Mizoram No.DLR/DL/73/1624-27 dated 20.2.1975 and this Permit was ultimately made permanent vide Order No.LRR/B-37/83-85/&&(A) dated 28.11.1985. As per the terms of the said order, the validity of the Permit extended upto 31.12.88 or upto the date they (BRTF) vacate the land. As such, the defendants are rightful to occupy the lands till they really vacate the land.

On careful perusal of the depositions of the plaintiff witnesses, the evidence on record could not reveal as to whether the plaintiffs have right, title and interest over the disputed land since all the plaintiff could not produce Heirship Certificate in respect of the suit lands in order to establish that they have such rights, title and interest over the suit lands. In absence of heirship certificate, or a will made for purpose, it is difficult and not safe to accept and recognized the present plaintiffs as the owners of the suit lands which they inherited from their fathers. Moreover, the plaintiffs could not established as to whether they were the sons of the original land owners as they even could not produce Birth Certificate or its equivalent document to show that they were as such. From depositions of the defendants witnesses, it was seen that a large portion of the occupied lands were handed over to the public of the village through the President, thingsulthliah village Council on the basis of the agreement entered into between of the BRTF authorities and the Govt. of Mizoram as per the resolution/deliberation made on 21.08.2006 in the meeting convened by the Secretary to the Government of Mizoram, Revenue Department. This show that the surrendered lands belonged to the public/village authority of Thingsulthliah and not to the present plaintiffs. On careful perusal and consideration of the depositions of the rival parties, this court is of the considered view that the plaintiffs are unable to establish their rights title and interest over the suit lands. Hence, the issue No.2 is decided in favour of the defendants.

Issue No.3:

Whether the law of Limitation Act 1963 is application to the State of Mizoram ? A reference can be made to the decision of the Hon'ble Gauhati High Court rendered in the case of Shri Lalchawimawia & ors -Vs_ State of Mizoram & ors decided on 05.05.1999 in Writ Petition © No.4 of 1996 reported in 1999 GLT (2) 410. The Hon'ble Gauhati High Court, Aizawl Bench had made clear that the Limitation Act 1963 is applicable to Mizoram. In view of this judgment, this court has decided the issued no.3 in favour of the defendants.

Issue No.4:

Whether the plaintiffs are entitled to the reliefs claimed ? If so to what extent ? In view of all the foregoing issues no,2 & 3 having been decided in favour of the defendants, the issue no.4 has become crystal clear that the plaintiffs are not entitled to the reliefs claimed. Hence issue no. 4 is decided in favour of the Defendants. Preponderance of the issues in favour of the defendants has made clear the suit that the Defendants have been relieved and that they do not need pay the claimed compensation as the instant suit has been instituted which had been barred by the Law of Limitation Act 1963.

The instant suit having been decided in favour of the Defendants is finally decreed as such and disposed of but with no cost.

Pronounced in open court in presence of parties.

Given under my hand and seal of this court on this 19th April 2012.

Sd/-R.VANLALENA

Senior Civil Judge -2

Aizawl District : Aizawl

Memo No. /SCJ-II(A)/2012 : Dated Aizawl, the 4th May, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District for information.
2. Rothangpuia, S/o Chhawna (L) Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
3. Lalchhuanga, S/o Chalzawna, Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
4. Lalzika Hnamte, S/o Thangdula, Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
5. K.Lalduhawma, S/o Chalthianga, Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
6. R.Kapchhunga, S/o Sena (L) Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
7. Zahlira, S/o Thuama (L) Thingsulthliah, Mizoram through counsel Shri L.H.Lianhrima.
8. Union of India through the Secretary to the Govt. of India, Ministry of Shipping & Surface Transport, New Delhi through counsel S.N.Meitei.
9. Chief Engineer, Project Pushpak, Mizoram, C/o 99 APO through counsel S.N.Meitei.
10. Officer Commanding, PNR COY Transit Camp, 405 RMPL/74 RCC (GREF) C/o 99 APO through counsel S.N.Meitei.
11. Registry section.
12. Case record.