

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT,
AIZAWL MIZORAM
Title Suit No. 6/89**

Lucy Ngurchhawni
W/o J.Manliana
R/o D.Vengthar, Aizawl, Mizoram.Plaintiff.

-Versus-

1. The Chief Engineer, Project Pushpak,
Zemabawk, C/o 99 A.P.O.
2. The Officer Commanding,
21st Road Maintenance Unit,
GREF, C/o 99 A.P.O.
3. The Secretary,
Border Roads Development Board,
New Delhi.
4. The Union of India,
Represented by the Secretary to the Govt. of India,
Ministry of Communication, New Delhi.
5. The State of Mizoram,
Represented by the Chief Secretary to the
Govt. of Mizoram, Aizawl.
6. The Secretary to the Govt. of Mizoram,
Land Revenue & Settlement Deptt., Aizawl.
7. The Director,
Land Revenue & Settlement Deptt., Mizoram, Aizawl.
8. The Administrative Officer,
Kolasib district, Mizoram, Aizawl.
9. The Deputy Commissioner, Aizawl District,
Mizoram. Defendants.

BEFORE

R.VANLALENA, Senior Civil Judge-2

For the Plaintiff : Shri W.Sam Joseph, Advocate.
For the Defendants
No. 1-4 : Shri S.N.Meitei , Advocate
For the Defendants
No.5-9 : Shri R.K.Malsawmkima and Joseph Lalfakawma
Asst. Govt. Advocates.
Date of Hearing : 03.08.2012.
Date of Judgement: 14.08.2012.

JUDGEMENT AND DECREE

The facts of the case leading to the filing of the instant T.S.No.6 of 1989 as reflected in the plaint may be stated belows :-

The Plaintiff is a resident of Dawrpui Vengthar, Aizawl. In the year 1963, her husband namely J.Manliana purchased a plot of land measuring an area of about 1 (one) bigha located at Kolasib Hmar veng, Kolasib, Mizoram from one Shri R.Thansanga alongwith about 40 Orange trees, 54 Assam Lemon trees, 2 Jackfruit trees, 1 Tamarind tree, some bamboo and Zawngtah trees standing over the land. Eventhough the land was purchased, he did not get the Land Pass changed in his name till the year 1985. In the year 1985, the Plaintiff's husband applied to the Director, Land Revenue & Settlement Department, Government of Mizoram for settlement Certificate for the said land and after due demarcation was done by the Department, he was issued with Land Settlement Certificate in short LSC No.KLB-43 of 1985. Unfortunately, the Plaintiff's husband died in the year 1988 and by virtue of Heirship Certificate, the present Plaintiff was declared legal heir in respect of the suit land covered by LSC No.KLB-43 of 1985. Hence the Plaintiff became the legal owner of the said land.

In the month of August 1966, (Border Road Task Force) BRTF personnel occupied the Plaintiff's land covered by LSC No.KLB-43 of 1985 and in the process of their occupation, the BRTF destroyed all the standing trees and fruits plants and still staying without paying any rent or compensation. While the Plaintiff's husband was alive, he had approached the BRTF authorities and the Government of Mizoram in person and through written representations for payment of rent for the occupation and also compensation for destruction of those trees. But the BRTF authority nor the Government of Mizoram paid no heed to the Plaintiff. In pursuant to the representation submitted by the Plaintiff's husband, the Defendant No.9 was kind enough to instruct the SDO, Kolasib to conduct joint inspection alongwith the BRTF authorities for assessing the rent in respect of the Plaintiff's land illegally occupied by the BRTF personnels. The monthly rent fixed by the Defendant no.9 in respect of the suit land covered by LSC No.KLB-43 of 1985 was Rs.416.32 paise (Rupees four hundred sixteen and thirty two paise) per month. The suit land has not been acquired by the Government till today but was illegally occupied by the BRTF. The Plaintiff has been paying tax for the suit land eversince they purchased the suit land and till it was collected. The Plaintiff's husband while he was alive had through his Lawyer issued Legal Notice u/s 80 (2) CPC 1908 to all the Defendants. In reply to the said Notice, the Executive Engineer (EE) (Civil) on behalf of the Chief Engineer Project Pushpak , Zemabawk submitted that the BRTF have a temporary permit over the suit land. The Plaintiff is not aware of the permit issued to the BRTF and even if they have a permit, the issuance of such permit is

illegal and the Plaintiff is entitled to compensation, rent and vacant possession of the suit land. The BRTF occupied the suit land without the permission/consent of the Plaintiff's family.

The cause of action arose in the month of August 1966 and continued till date. The subject matter of the suit land situated within the jurisdiction of the Aizawl Judicial District. The Plaintiff was exempted from paying court fees at the time of institution of the instant suit on her being a member of Mizo Tribe and a house tax payer. On being aggrieved by the illegal occupation and non-payment of rent/compensation, the Plaintiff approached the court and prayed the following reliefs:-

- a) A decree in favour of the Plaintiff declaring that the Permit issued to the BRTF was null and void.
- b) A decree be passed declaring that the Plaintiff is the legal owner of the land covered by LSC No.KLB-43 of 1985 and the Plaintiff has right and title over the suit land.
- c) By way of permanent/mandatory injunction, the Defendants may be restrained from erecting any structure within the suit land.
- d) Land rent at the rate of Rs.416.32 paise per month may be decreed in favour of the Plaintiff w.e.f. August 1966 till vacant possession of the suit land is given to the Plaintiff. Compensation for the crops destroyed at the rate fixed by the Deputy Commissioner, Aizawl District, Aizawl may be decreed in favour of the Plaintiff.
- e) A decree may be passed directing the Defendants to give vacant possession of the land covered by LSC No.KLB 43 of 1985 to the Plaintiff. If the Defendants want to acquire the land for public purpose, the Plaintiff be given adequate compensation calculated as per the provision of Land Acquisition Act.
- f) Let the cost of the suit and interest at the rate of 12% per annum over the rent and compensation be decreed in favour of the Plaintiff.
- g) Let a decree be passed in favour of the Plaintiff and against the Defendants for any other and further reliefs to which the Plaintiff is entitled as per law, justice, equity and good conscience.

On the other hand, the Defendant No.1-4, submitted their joint written statement and contested the suit stating that the suit is barred by law of limitation. The suit is not maintainable in its present form and style. The Plaintiff has no locus standi to file the suit and the said Pass are invalid ab initio. The Plaintiff has not served the Notice u/s 80 (2) CPC 1908. It is stopped by waiver and acquiescence. It is bad for misjoinder of parties. The averments made in para 1,2,3,4,5&6 are strongly denied. The averment made in para no.7 is denied as the Plaintiff is not the owner of the land. Averments made in para no.9 are denied. The SDO (Civil)

Kolasib and the BRTF personnel might have joint inspection and fixed the rate of rent but that does not necessarily mean that the suit land belonged to the Plaintiff and the ground rent of the land is not to be paid by the Defendant no.1. As the Permit for the suit land was issued to the Defendant no.1 by proper authority, the Plaintiff is not entitled to any compensation, rent or vacant possession of the land. There is no cause of action in the present suit from the year 1966 and no fruit trees, or plants or trees in the suit land are destroyed by the Defendant No.1.

Additional claim

When the Defendant No.1 came to the Mizo District of Assam in 1966, all the vacant lands were belonging to the State of Assam and even if the compensation etc. are to be paid to the Plaintiff, it is the State of Assam which has to pay compensation etc. because all liabilities, rights in respect of the then Mizo District were belonging to the State of Assam immediately before the North Eastern Area Re-organization Act of 1972 vide section 52 of the Act. Alternatively, even if the said compensation etc. are to be paid, it is to be paid by the authority which has issued the Permit to the Defendant no.1 and the Defendant no.1 has no liability whatsoever. The Plaintiff has only a right in and over the standing crops excluding the land itself and no fruit trees has been destroyed, the Defendant has no liability to pay compensation. Even if the Plaintiff obtained LSC No.KLB.43 of 1985, it is evident that the LSC No.KL 43 of 1985 was obtained fraudulently by deceiving the authority concerned and as such the said LSC is invalid ab initio. That over and above, the Defendant No.1 came to Mizoram to construct roads and buildings, etc. purely for the benefit of the people in general and for the benefit of the local people in particular, the Defendant no.1 has no liability to pay compensation to the Plaintiff, hence prayed the court to dismiss the suit.

The Under Secretary to the Government of Mizoram, Revenue Department, Aizawl, on behalf of the Defendant no.5-9 submitted written statement and challenged the legality and maintainability of the suit and authenticity of the Annexures and contested that there is no cause of action against the answering Defendants. The suit is not maintainable in its present form and style and is liable to be dismissed. It is bad for defects of parties. The suit is not properly valued for jurisdiction and court fees. The Plaintiff has not made out any prima facie case against the answering Defendants. The provision of section 80 (2) CPC 1908 has not been followed. The LSC No.KLB-43 of 1985 belonging to late Shri Manliana S/o Laldailova, husband of the Plaintiff is a portion of land sliced off from the House Pass No.10 of 1972 which was issued by the then Revenue Authority of Mizo District Council to Shri Thansanga for garden vide EP.7/K-71-72/25 dated 18.02.1972. A copy of which is enclosed with the written statement and marked as Annexure 'A'. However, House Pass No.457 of 1963 in favour of Shri R.Thansanga which covered an area of 1(one) Bigha and the same was subsequently converted into LSC No.43 of 1985 in favour of Shri Thansanga and the same has still covered 1.04 Bigha which

area was not shown as sliced off area to other land. Thus the Plaintiff statement in the corresponding para is not reliable on account of containing controversy in itself. A copy of House Pass No.457 of 1963 and LSC No.KLB-43 of 1985 with boundary description are enclosed and marked as Annexure 'B' and 'C'. As per the para 1 of the plaint, the Plaintiff's husband purchased the land from Pu Thansanga (L) as back as in 1963. The land of late R.Thansanga was covered by House Pass No.10 of 1972. Pu R.Thansanga cannot sell his land which has not been granted to him by the authority he has Pass/Permit for the land and he got his House Pass No.10 of 1972, but as per Plaintiff's version the same was sold to her husband by late R.Thansanga in 1963. Thus the sale before getting any right over the land is null and void. Again as per the land laws of Mizoram, House Pass/Permit/Garden Pass cannot be sold out without permission from the authority. Thus the Defendant put the Plaintiff to substantiate the same by producing the sale deed or producing the permission of the authority allowing the sale. It is an absurd proposition that in a bigha of land, 40 Orange trees, 54 Lemon trees, some bamboo and Zawngtah trees can be planted. The Defendants no.5-9 stated that the issuance of LSC No.KLB-43 of 1985 in favour of the Plaintiff's husband was made out of the portion from Permit No.10 of 1972 as seen in Annexure 'B' whereas the Plaintiff has claimed that the suit land was purchased by her husband in 1963. It is thus doubtful as it is found that the suit land was purchased by the Plaintiff's husband in the year 1963 before his vendor has got any Permit over the land. The answering Defendants stated that they are not liable to pay any compensation to the Plaintiff for damage of trees as it was done by others. The answering Defendants denied the contents of para no.6&7 of the plaint and stated that neither joint verification nor fixation of monthly rent by team of Officers is heard or recorded by the answering Defendants. As the Plaintiff failed to make out any prima facie case against all the answering Defendants the suit is liable to be dismissed.

On basis of the pleadings of the parties, the court framed the following issue :-

- 1) Whether the suit is maintainable in its present form and style ?
- 2) Whether the suit is barred by limitation ?
- 3) Whether the BRTF have occupied the suit land ?
- 4) Whether the Plaintiff is entitled to the rent and compensation for the suit land ?
- 5) Whether the Plaintiff is entitled to the relief claimed ? If so to what extent and from whom ?

The Plaintiff examined herself and three other witnesses. The Defendants no.1-4 (BRTF) examined two witnesses Mr.Rajeeb Lochan and Mr.SM Logonathan. The Defendants No.5-9 (State of Mizoram) examined no witness.

Issue No.1: Whether the suit is maintainable in its present form and style. Regarding this issue on maintainability of the suit, it had been taken up and decided 27.04.1998 at the time of preliminary hearing on maintainability of the suit. The Plaintiff was directed to adduce evidence. Hence decided on in favour of the Plaintiff. I find no reason to raise the issue again at this stage.

Issue No.2: Whether the suit is barred by the limitation. The instant suit had been filed in the year 1989 while the cause of action arose in the month of August 1966 when the BRTF personnel started occupation of the suit land. The instant suit was filed after 23 years lapsed. As per the Limitation Act 1963, any suit for recovery of immovable property has to be filed within the period of twelve years. However, as the applicability of the Law of Limitation Act 1963 had been barred by the Notification No. TAD/61/12/64 dated 14th March 1966, delay in filing the instant suit is neglected and overseen. The said Notification runs as follows :- **In exercise of the powers conferred by clause (b) of sub-paragraph (1) and sub-paragraph (2) of paragraph 12 of the Sixth Schedule to the Constitution of India, the Governor of Assam is pleased to direct that the Limitation Act 1963 (No.63 of 1963) shall not apply to the Tribal Areas of Assam specified in the table appended to paragraph 20 of the Sixth Schedule to the Constitution of India with effect from the 1st January 1964. In the case of RSA No.11 of 2003 in Ramthlengliana Vs. The State of Mizoram, Revenue Department, the Hon'ble Gauhati High Court has held that the Limitation Act 1963 is barred in Mizoram. Hence the issue no.2 is decided in favour of the Plaintiff.**

Issue No.3: Whether the BRTF have occupied the suit land ? In her deposition before the court, the Plaintiff stated that the BRTF personnel occupied the suit land in the month of August 1966 and continued the illegal occupation till date. However, the Defendants No.1-4 (BRTF) through DW 1 namely Shri SM Loganathan S/o Madhusudanan, Officer commanding of 107 RCC, BRTF at Aizawl deposed that the BRTF was occupying the land since May 1967 and not in August 1966. However, the BRTF was not occupying the present suit land illegally and without any authority. The Executive Council of the then Mizo District Council issued valid Department Pass bearing No.4 of 1970 which was renewed from time to time till 31st December 1989 or whenever the BRTF vacate the lands. DW 2 namely Shri Rajeev Lochan S/o Bishambar Nath (L) serving as the Officer Commanding Officer, 107 RCC, BRTF at Aizawl in the year 2009 deposed that the BRTF is occupying the land since May 1967 and not in August 1966. However, the BRTF is not occupying the suit land illegally and without any authority. The Executive Council of the then Mizo District Council issued valid Departmental Pass bearing No.4 of 1970 which was renewed from time to time till 31st December 1989 or whenever the BRTF vacate the lands. As the evidence clearly revealed that the suit land is occupied by the BRTF, this issue no.3 is decided in favour of the Plaintiff.

Issue No.4: Whether the Plaintiff is entitled to the rent and compensation for the suit land ? During the course of trial, the Plaintiff Smt. Lucy Ngurchhawni died on 15.03.1994, her daughter Teresa Lilipari, was declared as the legal heir of the deceased Ngurchhawni, hence she substituted her late mother and deposed her evidences before the court as PW1. She deposed that her father J.Manliana died in the year 1988 and her mother Lucy Ngurchhawni died in the year 1994. She stated that in the year 1994 the original Case Record as the instant suit was burnt into ashes due to the fire that gutted the Deputy Commissioner's Office, Aizawl. After that the case was reconstructed. She deposed that her father purchased a plot of land from Shri R.Thansanga (L) which was situated at Kolasib Hmar veng in the year 1963. The Land Pass/Permit was changed in his father's name in the year 1985 and still in his name. She stated that the suit land was occupied by the BRTF in the year 1966-67 and destroyed the fruit trees within the suit land. Her father J.Manliana approached the Government of Mizoram and the BRTF authorities for payment of rent and other compensation for the crops destroyed, but no payment was made by the said Defendants. Her father approached the Deputy Commissioner's Office Aizawl requested to make assessment of rent in respect of the suit land, and also for compensation for crops damaged, the Deputy Commissioner's Office Aizawl assessed the rent @ Rs.416.32 paise per month and the assessment was made by joint verification team of Deputy Commissioner office and BRTF authority. PW2 namely Shri Dominic Lalhmangaiha, resident of Kulikawn Aizawl MCS Rtd. Deposed that the father of the PW1 is his elder brother who purchased a plot of land measuring an area of about 1 (one) Bigha situated at Kolasib Hmar veng, in the year 1963 alongwith various fruit trees in the land. His elder brother did not get the Land Pass changed in his name till the year 1985. His brother got LSC No.KLB-43 of 1985 in respect of the suit land which was purchased in the year 1963. The land was occupied by the BRTF personnel in the month of August 1966 and in the process of occupation, the BRTF destroyed all the trees and plants within the land. Neither the Government of Mizoram nor the BRTF authority paid land rent nor compensation to his brother. The Land rent fixed by the Deputy Commissioner, Aizawl to be paid by the BRTF to the Plaintiff was Rs.415.32 per month and the same was communicated to the BRTF authority but the BRTF authority did not pay the rent nor compensation for destruction of fruit trees nor vacated the land. PW 3 namely Shri Bazi Ram deposed that while he was posted at Kolasib as an Asstt. Settlement Officer –II, (Revenue Department), he was directed to make spot verification in respect of the suit land by the Asst. to the Deputy Commissioner, Aizawl. However, before he conducted the spot verification, he was transferred to Aizawl and his successor – Officer namely Shri Lalramnghaka, Asstt. Settlement Officer –II conducted the spot verification. He stated that the land covered by LSC No.KLB-43 of 1985 with others LSC are partly occupied by the BRTF and the unoccupied portion of the lands could not be utilized by the owners as it was restricted by the BRTF for security reasons. The Plaintiff in support of her claim for land rent and compensation for damage to crops over the suit land covered by LSC No.KLB 43 of 1985 exhibited the following documents :-

- 1) Ext-P-I is the plaint copy.
- 2) Ext-P-I(a) is signature of her deceased mother.
- 3) Ext-P-2 is the Heirship Certificate No.66 of 1995 in respect of the compensation in favour of the substituted Plaintiff (The Plaintiff Smt.Lucy Ngurchhawni had been substituted by her daughter Teresa Lilipari due to her death on 15.03.1994).
- 4) Ext-P-3 is the copy of Heirship Certificate No.548 of 1995 in respect of the compensation only in favour of the Ms.Teresa Lilipari (daughter of late J.Manliana & Smt.Lucy Ngurchhawni).
- 5) Ext-P-4 is the copy of Notice u/s 80 CPC.
- 6) Ext-P-5 is In hmun Inpekna lehkha.
- 7) Ext-P-6 is the copy of LSC No.KLB 43 of 1985.
- 8) Ext-P-7 is the copy of a letter sent to the Chief Engineer, Pushpak, Zemabawk, Aizawl dated 20th November, 1985 by shri Lalthlengliana, Asstt. to the Deputy Commissioner, Aizawl.

In her cross examination, she (PW1) stated that the land Pass on the basis of which the LSC No.KLB 43 of 1985 was issued was in her father's name and stated that the land was purchased from Shri R.Thansanga but did not know in which year it was bought. In the preceeding issue no.3, it has been decided in favour of the Plaintiff that the suit land was occupied by the BRTF and no land rent and compensation has been paid by the Defendants 1-9. From the evidences on record, it is revealed that the suit land was occupied by the BRTF without paying any rental compensation for damage to crops etc. Hence issue no.4 is decided in favour of the Plaintiff.

Issue No.5: Whether the Plaintiff is entitled to the relief claimed ? If so to what extent and from whom ? All the other issues have been decided in favour of the Plaintiff. Hence this issue does not seem to pose an obstacle in granting relief to the Plaintiff. However, the issue which needs to be discussed is from whom the Plaintiff would be entitled to get the relief. As per the evidence/depositions of the Plaintiff, the Government of Mizoram, with the BRTF authorities by joint verification had fixed the rate of land rent to be paid by the Defendants No.1-4 to the Plaintiff was Rs.416.32 paise per month. However, DW 1&2 for the Defendants no.1-4 denied that joint inspection team visited the suit land while the BRTF are in occupation. The land was occupied by BRTF on the strength of Temporary Permit No.4 of 1970 which was extended upto 31st December 1984 vide Government of Mizoram order No.LRR-47/73-80/Vol-II(A)/144 dt.17th July 1980 and further extended upto 31st December 1989 vide Government of Mizoram Order No.LRR/B-37/83-85/60 dt.11th Sept 1985. However, the Defendants no.1-4 exhibited no documents in support of their contentions. However on careful perusal of the document annexed by the Plaintiff and marked as Ext-P-7, the exhibited document is a letter from the Asstt. to the Deputy Commissioner, Aizawl District, Aizawl sent to

the Chief Engineer, Project Pushpak, Zemabawk, Aizawl C/o 99 APO regarding claims for Rental charges and compensation requesting to make payment of rental charges and compensation to seven claimants whose lands were being occupied by the BRTF at Kolasib Hmar veng. Vide memo No.F.14011/2/85-DC(A)/112 dated 20th Nov.1985. Among the list of the seven claimants, the present Plaintiff's father was listed at Serial No.4 with a land rent rate of Rs.416.32 paise per month. However. The land rent and compensation was not paid till date. On careful perusal of all the evidence on record and on further perusal of all the documentary evidences, it is evident that the Plaintiff is the legal owner of the suit land covered by LSC No.KLB-43 of 1985. It is also evident that the Defendants No.1-4 had occupied the suit land from the year 1967 till recently by virtue of the Pass No.4 of 1970 which was extended from time to time and till 31st December, 1989. It is also evident that the land rent and compensation had not been paid to the Plaintiff for such occupation of land and destruction of fruit trees in the process of their occupation. On going through all the evidences, this court is of the considered view that the land rent and compensation for occupation of the Plaintiff's land covered by LSC No.KLB-43 of 1985 be paid by those who actually had occupied the suit land at the relevant times who actually had enjoyed its utility derived from it. Hence this issue is decided in favour of the Plaintiff holding that he would be entitled to get the relief from the Defendants no.1-4.

However the relief granted to the Plaintiff would be confined only to serial no (a) (b) (d) and (e) of the prayer of the plaintiff.

Having finally decided the suit, it is thus decreed as follows :-

- a) It is hereby declared that the land Permit No.4 of 1970 issued to the Defendants no.1-4 is null and void as it was issued in respect of a land already allotted to the Plaintiff prior to the said Pass.
- b) It is hereby declared that the Plaintiff is the legal owner of the land covered by LSC No.KLB-43 of 1985 and has the right and title over the land.
- c) The Defendants no.1-4 (BRTF) are directed to pay to the Plaintiff the land rental charges at a rate of Rs.416.32 paise per month w.e.f. the month of May 1967 with interest at the rate of 6% per annum till full realization of full amount and further sum of Rs.10,000/- as compensation for damage caused to the fruit trees within a period of two months from the date of this decree.
- d) The Defendants no.1-4 are directed to give vacant possession of the suit land to the Plaintiff within a period of two months from the date of this decree.

Parties are to bear their own cost.

Having decided as above, the suit is thus disposed of.

Pronounced in open court in presence of parties.

Sd/- R.VANLALENA
Senior Civil Judge – II
Aizawl District : Aizawl.

Memo No. /SCJ-II(A)/2012: Dated Aizawl the, 14th August, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Lucy Ngurchhawna, W/o J.Manliana, R/o D.Vengthar, Aizawl, Mizoram through Shri W.Sam Joseph & Ors, Advocates.
3. The Chief Engineer, Project Pushpak, Zemabawk, C/o 99 A.P.O. through counsel Shri S.N.Meitei.
4. The Officer Commanding, 21st Road Maintenance Unit, GREF, C/o 99 A.P.O. through counsel Shri S.N.Meitei.
5. The Secretary, Border Roads Development Board, New Delhi through counsel Shri S.N.Meitei.
6. The Union of India, Represented by the Secretary to the Govt. of India, Ministry of Communication, New Delhi through counsel Shri S.N.Meitei.
7. The State of Mizoram, Represented by the Chief Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
8. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Deptt., Aizawl through Asst. Govt. Advocates.
9. The Director, Land Revenue & Settlement Deptt., Mizoram, Aizawl through Asst. Govt. Advocates.
10. The Administrative Officer, Kolasib district, Mizoram, Aizawl through Asst. Govt. Advocates.
11. The Deputy Commissioner, Aizawl District, Mizoram through Asst. Govt. Advocates.
12. Registry Section.
13. Case record.

PESHKAR