

**IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL
DISTRICT, AIZAWL MIZORAM
Title Suit No. 6/91**

V.L.Muana
S/o Duma,
Luangmual, Aizawl.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: 21.08.2012.

JUDGEMENT AND DECREE

The facts of the case leading to the filing of the Title Suit No.6 of 1991 as reflected in the plaint may be stated belows :-

The Plaintiff has a plot of land measuring an area of about 0.29 Bigha which was taken as half a Bigha located at Kolasib Hmar veng, Kolasib. The said land was allotted to him by the then Mizo District Council authorities vide Pass No.35 of 1964. The Plaintiff had planted various fruit bearing trees and other plants on the said land. In the year 1985, he applied to the Director, Land Revenue & Settlement Department, Government of Mizoram to convert the said Pass into Land Settlement Certificate (in short LSC) in place of the Pass No.35 of 1964. After due verification and demarcation, he was issued with LSC No.KLB 47 of 1985 superseding the Pass No.35 of 1964.

That in the month of 1966, the BRTF personnel occupied the Plaintiff's land covered by LSC No.47 of 1985 and in the process of their occupation, the BRTF had destroyed about 16 Orange trees, 20 Assam Lemon trees, and 7 Tamarind trees. They are staying till date without paying any land rent nor compensation for destruction of those fruit bearing trees. The Plaintiff had approached the authorities of the BRTF and the Government of Mizoram in person and through written representations for payment of land rents by the BRTF for their occupation of the suit land and for payment of compensation for destruction of such fruit bearing trees. In pursuance of the representation submitted by the Plaintiff, the Defendant no.9 the Deputy Commissioner, Aizawl District, Aizawl was kind enough to instruct the SDO Kolasib to conduct joint verification/inspection alongwith the BRTF authorities for assessing the rent in respect of the Plaintiff's land occupied by the BRTF. The monthly rent thus fixed by the Deputy Commissioner, Aizawl District Aizawl was Rs.128/- (Rupees one hundred and twenty eight) only per month. As the Plaintiff's land had not been acquired by the Government till date, the Plaintiff is still the legal owner of the suit land and is entitled to be paid rental charges for his land. The Plaintiff had been paying taxes till it was collected. As the Defendants had not taken any steps for paying rent to the Plaintiff, the Plaintiff therefore, through his Ld. Lawyer issued Legal Notice u/s 80 (2) CPC 1908 to all Defendants. In reply to the said Notice, the EE (Civil) on behalf of the Defendant no.1 stated that the BRTF had a Temporary Permit over the suit land. However, the Plaintiff is not aware of the Permit issued to the BRTF over the suit

land and even if the said Permit was issued to the BRTF, the issuance of such Permit was illegal and the Plaintiff is entitled to receive land rent, compensation and vacant possession of the suit land as the BRTF occupied the suit land without the consent and permission of the Plaintiff. The cause of action arose in the month of August 1966 and continued till date and till the rent for illegal occupation and compensation for fruit bearing trees destroyed, is paid to the Plaintiff and the land is handed over to the him. The subject matter of the suit situated at Kolasib town which is the jurisdiction of this court. The Plaintiff is a house tax payer belonging to Mizo tribe and is exempted from paying court fees at the time of institution of this suit.

The Plaintiff prayed the following reliefs :-

- a) Let a decree be passed in favour of the Plaintiff declaring that the Permit issued to the BRTF was null and void.
- b) Let a decree be passed declaring that the Plaintiff is the legal owner of the land covered by LSC No.KLB 47 of 1985 and the Plaintiff has rights and title over it.
- c) By way of permanent/mandatory injunction, the Defendants no.1-3 be restrained from erecting any structure within the suit land.
- d) Let the rent at the rate of Rs.128/- Rupees one hundred and twenty eight) per month be decreed in favour of the Plaintiff with effect from August 1966 till vacant possession is given to the Plaintiff. The compensation for crops destroyed at the rate fixed by the Deputy Commissioner, Aizawl District, Aizawl be also decreed in favour of the Plaintiff.
- e) Let a decree be passed ordering the Defendants to give vacant possession of the land covered by LSC No.KLB 47 of 1985 to the Plaintiff. If the Defendants wants to acquire the land for public purpose, the Plaintiff be given adequate compensation calculated as per the provisions of the Acquisition Laws.
- 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 against 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 Commander, 36 BRTF, GREF submitted written statements on behalf of Defendants no.1-4. He contested the suit stating that the suit is not maintainable in its present form and style. It is bad for non-joinder of necessary parties and mis-joinder of parties and also bad for non payment of court fees. It is barred by the limitation. Documents annexed to the plaint are neither original nor certified true copy of the original. The Plaintiff has no locus standi to file the instant suit in as much as the Defendants are in occupation of the suit land after getting proper valid permit issued to them by the Government of Mizoram. The suit is not valued properly. The Defendants denied and not admitted the averments made in paragraph 1 of the plaint. The Defendant stated that the Plaintiff got his LSC after more than 21 years of getting his House Pass and it is very difficult to think why the Plaintiff took such long time for converting his House Pass into LSC. Hence without substantive evidence, the Plaintiff's claim does not deserve consideration at all. The Defendants no.1-4 stated that the averments made in paragraph 2 of the plaint are wrong and contrary to the facts on record. The Department (BRTF) was allotted the land by the Government of Mizoram for setting up of roadside Camp in the year 1967 under a valid Pass/Permit which is renewed from time to time. It is also mentioned that the BRTF is not possessing any land without any valid permit issued by the Government of Mizoram and this itself is a proof that no land in occupation of the Department was at any time being owned by any body else other than the Government of Mizoram. This being the factual position, issuing of LSC No.KLB 47 of 1985 by the Revenue Department of the Mizoram to the Plaintiff against a piece of land which is under the custody and occupation of the Department does not arise. The land was allotted to the Department in the month of May 1967 by the Government of Mizoram and thus the BRTF is in occupation of the land. From the discussion held by the BRTF with the SDO Kolasib that as per the rules and regulations prevailing in Mizoram, no private party is entitled to receive any rent or compensation for the land allotted through the permit issued by the Government of Mizoram. The Area Administrative Officer, Kolasib vide its letter no.KGA.11/70/5 dated 27th January 1970 clearly clarified to the Department that no rent or compensation is due to be paid by the Department for the land occupied by it. It is denied that the Plaintiff approached the authorities of the BRTF and the Government of Mizoram in person and through written representations for realizing the rental charges and compensation etc as alleged in the corresponding paragraph of the plaint. Hence,

admissibility of rent or compensation to the Plaintiff does not arise at all. It is specifically denied that the BRTF was a party to the joint inspection team for assessing the rent and compensation in respect of the Plaintiff's land occupied by the BRTF. The BRTF is not aware of any assessment made by the Defendant no.9. The BRTF reiterated reaffirmed that the land in occupation by the BRTF cannot be considered and treated as illegal in as much as the Department occupied the land after getting valid permit issued by the Government of Mizoram. The land in dispute is allotted to the BRTF in the year 1967 by the Government of Mizoram. Therefore the Plaintiff cannot claim to be the owner of the land and therefore the question of acquiring the land or making any compensation whatever nature to the Plaintiff does not arise at all. The question of obtaining a consent or permission of the Plaintiff does not arise at all and the Plaintiff is not entitled to the rental charges, compensations and vacant possession of the land as the BRTF occupied the suit land on the strength of a valid permit. The cause of action does not arise in favour of the Plaintiff and against the Defendants. This court has no jurisdiction to try the suit. The Plaintiff is not exempted from paying court fees on the ground that he is a house tax payer. He has engaged a lawyer to plead on his behalf before this court, hence he is bound to pay court fees as per valuation of the suit. In the premises and on factual position of the case, the Defendants no.1-4 with due respect prayed the court to dismiss the suit with suitable costs.

On behalf of the Defendants no.5-9, the Deputy Secretary to the Government of Mizoram, Revenue Department submitted written statement. In his written statement, the Defendants stated that there is no cause of action in favour of the Plaintiff and against the Defendants. The suit is bad for mis-joinder of parties and non-joinder of necessary parties. It is not maintainable in its present form and style. The Plaintiff has not claimed any relief against the answering Defendants as such they are not necessary party to this suit section 80 (2) CPC has not been complied with by the Plaintiff. He is not exempted from paying court fees as he could engage a lawyer for the case. Defendants no.5-9 stated that in fact the Plaintiff was allotted a plot of land by the then Revenue Officer of the erstwhile Mizo District Council under Pass No.35 of 1964 with its area of 60 ft depth and 60ft frontage which was located at Kolasib Opposite to the Police Station vide No.CP 1/K/64/972-5 of 13.02.1964. Defendants no.5-9 denied the averments made in para no.2 of the plaint and stated that with the outbreak of insurgency in the then Mizo District, the Indian Army was deployed by the Centre in the counter-insurgency operation. Alongwith the army, other forces like BRTF also came to Mizoram

to help the army in their operation who were encamped in such places wherever it was convenient for army action to counter the insurgency. All such Forces cut down the fruit bearing trees and all other jungles near their camps for security reasons. The answering fruit bearing trees of the Plaintiff were destroyed by the BRTF. The Plaintiff did not inform about such destruction to the answering Defendants. The number of such fruit bearing trees mentioned in the plaint could not be planted in such small plot of land measuring an area of 3600 Sq.ft. of his Pass No.35 of 1964.

The answering Defendants (no 5-9) did not deny that LSC No.KLB 47 of 1985 was issued to the Plaintiff by following all codal formalities with an area of 4265.65 Sq.ft. with specific boundaries. However, the Defendants no.5-9 did not know as to whether the Plaintiff approached the concerned authorities for payment of rent and compensation for those fruit bearing trees and plants as stated in para no.4 of the plaint. The averments made in para no.5&6 of the plaint are neither denied nor admitted by the answering Defendants because the answering Defendants could not find the joint inspection team report either in the Office of SDO(C) Kolasib or with the BRTF Kolasib. Hence the Plaintiff is put to strict proof of the same. The Defendants no.5-9 stated that the Temporary Permit No.4 of 1970 was issued to the BRTF for their occupation of the land at Kolasib with a validity extended upto 31st December 1989 vide Government's letter no.LRR/8-37/83-95/60(A) of 11.09.1985. There is no cause of action in favour of the Plaintiff after lapsed of 25 years to bring the suit against the Defendants. The valuation of the suit had not been given to involve the jurisdiction of the court and is liable to be dismissed. The averments made in para no.12 of the plaint is not correct. As per the Adaptation of India Laws Order 1937, court fees shall be paid by all parties who engaged pleaders and mukhtars in civil or criminal cases in Mizoram. In the premises stated above, the answering Defendants with due respect prayed the court to dismiss the suit with costs.

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

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

The Plaintiff examined 3 witnesses including himself while the Defendants no.1-4 examined 2 witnesses. The Defendants no.5-9 examined no witnesses.

Issue no.1 : Whether the suit is maintainable in its present form and style ? This issue had already been discussed on 27.04.1998 in presence of all parties and had been decided in favour of the Plaintiff. Hence this issue does not need to be discussed at this stage.

Issue no.2 : Whether the suit is barred by limitation ? The instant suit had been filed in the year 1991 by the Plaintiff while the cause of action alleged to have arisen in the year 1966. When the BRTF personnel started occupation of the suit land. The instant suit was filed after 25 years from the date of the cause of action had arisen. 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 had occupied the suit land ? Plaintiff deposed that he was allotted a plot of land by the then District Council authority vide House Pass No.35 of 1964 while he was posted at Kolasib Police Station. He added that he had constructed a small house within the land and planted about 16 orange trees, 20 Assam Lemon trees and 7 Tamarind trees. He was transferred from Kolasib to Aizawl in the year 1965. The BRTF personnel occupied the land in the year 1966 and in the process of their occupation, they destroyed the fruit bearing trees. On the other hand, the DW 1 namely SM Loganathan, the Officer Commanding, 107 RCC deposed on 06.02.2007 before the court that

the BRTF occupied the suit land on the strength of the Department Pass No.4 of 1970 issued by the then Executive Committee of the Mizo District Council and the said Permit was extended from time to time and upto 31st December 1989 or whenever the BRTF vacate the land. From the depositions of PW 1 and DW 1, it is clearly seen that the suit land was occupied by the BRTF. Hence it is decided in favour of the suit.

Issue no.4 & 5: These two issues are taken up together for the sake of convenience. The evidence on record shows that the Plaintiff was issued the House Pass No.35 of 1964 in respect of the suit land by the then Mizo District Council authorities. He therefore built a small house over the land and also planted about 16 orange trees, 20 Assam Lemon trees and 7 Tamarind trees. However, the suit land was occupied by the BRTF in the year 1966 and in the process of their occupation, the BRTF destroyed all those fruit bearing trees. The BRTF eventhough occupied the land without the consent of the Plaintiff did not pay rent to him nor pay compensation for destruction of those fruit bearing trees. On the other hand the DW 1 stated that the BRTF occupied the land on the strength of Department Permit No.4 of 1970, but did not destroy such fruit bearing trees as alleged by the Plaintiff. In their depositions before the court, DW 1&2 stated that as far as the records in the Office is concerned, there was only one Jackfruit tree in the suit land at the time of occupation of the suit land. The suit land was full of jungle growth. They added that the Area Administration Officer had certified that the suit land was free from encumbrances at the time of the occupation of the land was started. They admitted that the BRTF did not pay rent and compensation to the Plaintiff. However, they denied that the BRTF is liable to pay rent and compensation to the Plaintiff. They also denied that the Plaintiff has the right to claim the land as LSC was issued to him by the concerned Revenue Authority after following all the formalities. DW 1 &2 admitted that during the whole period of occupation of the land, the BRTF did not pay tax in respect of the land but occupied the suit land by virtue of Permit No.4 of 1970.. DW 1 & 2 stated that they did not know under what law the Department Permit No. 4 of 1970 was issued to them. In their evidences, the DW 1 & 2 did not contest on the ownership of the land to the Plaintiff. As the legality of the LSC No.KLB 47 of 1985 has not been challenged by the Defendant no.5-9 (Government of Mizoram by giving evidence, this court is compelled to presume that the Plaintiff is the legal and rightful owner of the suit land covered by Pass No.35 of 1964 which was later converted into LSC No.KLB 47 of 1985 while the Plaintiff deposed that he was allotted a plot of land at Kolasib Hmar veng, Kolasib in the year 1964 covered by Pass No.35 of 1964 and later

the said Pass was converted into LSC No.KLB 47 of 1985. PW3 namely Shri H.Bazi Rama deposed that he was posted at Kolasib at the relevant time as Asstt. Settlement Officer-II, Kolasib and conducted spot verification of the lands occupied by the BRTF at Kolasib Hmar veng. He added that he knew that some portion of the land belonging to Plaintiff vide LSC NO.KLB 47 of 1985 was occupied by the BRTF and the unoccupied portion of the land of the Plaintiff could not be utilized by the owner as it was restricted by the BRTF for security reasons. In his second verification, he conducted the verification in respect of the land of the Plaintiff but he did not submit the report to the Deputy Commissioner, Aizawl District, Aizawl as he was transferred to Aizawl before he could submit the report. On careful examination of the deposition of PW 2 namely Shri Chhuanmawia, Surveyor, Land Revenue & Settlement Department, deposed that while he was posted at Kolasib in the Revenue Department, the Plaintiff Shri V.L.Muana made an application for conversion of his Pass No.35 of 1964 into Land Settlement Certificate. After he made a proper survey of land covered by Pass No.35 of 1964, he had prepared a Draft Sketch Map and Report to the Director, Land Revenue & Settlement Department, Aizawl for further action. Thereafter, on the basis of his report, the Revenue authority issued LSC No.KLB 47 of 1985 by superseding the Pass No.35 of 1964. In cross examination, PW 2 denied that he had not surveyed the land of Shri V.L.Muana. Also denied that he had not prepared the Draft Sketch Map of the said land and further stated that the BRTF personnel are forcibly occupying the suit land. In his re-examination, the PW2 stated that while he was conducting survey for demarcation of the land, he was seen by the BRTF personnel and no one raise any objection of his survey. He added that on the basis of his survey and demarcation, the said LSC No.KLB 47 of 1985 was made by the authority. The suit though contested by the Defendants no.1-4, (BRTF) and Defendants no.5-9 (State of Mizoram) no evidence has been adduced by the Defendants no.5-9 and the only evidence recorded by this court is the evidences of the Plaintiff with his witnesses and the evidences of Defendants no.1-4. On careful perusal of all the evidences on record, this court has come to a conclusion to decide that the Plaintiff is entitled to the rents and compensation for the suit land and is thus entitled to the relief claimed by him from the Defendants no.1-4 as the said Defendants (BRTF) actually occupied the suit land from the year 1967 without paying any rent to the Plaintiff for such occupation and also compensation for destruction of those fruit bearing trees by the BRTF Apart from the present Plaintiff, there are other land owners whose lands had been occupied since the month of May 1967 by the BRTF (Defendants no.1-4) at Kolasib Hmar veng, Kolasib. All the suit lands are located at Kolasib Hmar veng and are adjacent to each

others. This court is of the view that the land rent and compensation for occupation of the land and for destruction of fruit bearing trees on the land be paid by those who actually had occupied at the relevant times who actually had enjoyed its utility derived from it. Hence issues no. 4&5 are decided in favour of the Plaintiff.

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 BRTF (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 Permit.
- b) It is hereby declared that the Plaintiff is the legal owner of the land covered by LSC No.KLB 47 of 1985 and has the right and title over it .
- c) The Defendants no.1-4 are directed to pay to the Plaintiff the land rental charges at a rate of Rs.128/- (Rupees one hundred and twenty eight) only per month w.e.f. May 1967 with interest @ at a rate of 6% per annum till full realization of the full amount and further sum of Rs.10,000/- (Rupees ten thousand) only as compensation for damage caused to the fruit bearing 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 be their own costs.

Having decided the suit as above, it is hereby disposed of.

Pronounced in open court on this 21st August 2012.

Sd/-R.VANLALENA

Senior Civil Judge – II

Aizawl District : Aizawl.

Memo No. /SCJ-I I(A)/2012:Dated Aizawl the, 21st August,2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. V.L.Muana, S/o Duma, Luangmual, Aizawl.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.Shri R.K.Malsawmkima and Shri Joseph Lalfakawma, Assistant Govt. Advocates.
- 13.Registry Section.
- 14.Case record.

PESHKAR