

IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL MIZORAM
Title Suit No.5/1986

Bishnu Prasad Jaisi,
 S/o Robilal (L)
 Zemabawk,
 Aizawl, Mizoram.

.....Plaintiff.

-Versus-

1. State of Mizoram
 Represented by the Chief Secretary to the Government
 of Mizoram.
 2. The Govt. of India,
 (Through the Secretary, Ministry of Home Affairs, New Delhi)
 3. The Deputy Commissioner,
 i/c Revenue Department,
 Govt. of Mizoram, Aizawl.
 4. The A.D.C
 i/c Revenue Department,
 Govt. of Mizoram, Aizawl.
 5. The Secretary to the Govt. of Mizoram,
 Land Revenue & Settlement Department,
 Aizawl, Mizoram.
 6. The Director,
 Land Revenue & Settlement Department,
 Aizawl, Mizoram.
 7. J.L.Thangluaia,
 S/o Saitawna,
 R/o Bawngkawn, Aizawl, Mizoram.
 8. Z.Lalramliana,
 S/o Hranga,
 R/o Bawngkawn, Aizawl, Mizoram.
 9. Lalthangpuii,
 D/o Kapthanga,
 R/o Bawngkawn, Aizawl, Mizoram.
 10. Rev.Chawnghranga,
 S/o Thangvunga (L)
 R/o Thuampui veng, Zemabawk, Aizawl.
-Defendant.

BEFORE
R.VANALENA, Senior Civil Judge-2

For the Plaintiff : Shri W.Sam Joseph, Advocate.
 For the Defendants: Shri R.K.Malsawmkima and Shri Joseph
 Lalfakawma, Asst. Govt. Advocates and
 Shri M.M Ali, Advocate for Def.No.10.
 Date of Judgement: 20.7.2012.

JUDGEMENT

The facts of the case leading to the filing of the instant suit T.S.No.5 of 1986 as reflected in the plaint may be briefly stated as follows :

The plaintiff is a resident of Zemabawk, Aizawl. He had purchased a land measuring an area of about 4.97 Bighas located at Kelpu veng (Thuampui veng) Zemabawk, Aizawl from one Shri Lalhleia for a sum of Rs.4,500/- (Rupees four thousand and five hundred) and thereafter constructed a dwelling house over the said land. He planted trees and plants in the said land. The plaintiff and his family then started living there.

Originally the said land had been allotted to one Shri Lalhleia on 27.11.1965 by issuing a House Pass No.160 of 1965 with an area of 4.97 Bighas by the Village Council authorities (now succeeded by Local Council). Ever since the plaintiff purchased this land, he had been paying tax regularly till date.

On 29.05.1982, the plaintiff applied to the defendant no.5 (Director, Land Revenue & Settlement Department) for converting the land covered by House Pass No.160 of 1965 into different House sites in the name of himself and his children namely – (1) Bishnu Prasad Jaisi, (2) Lalchhimi (3) Chhalikala (4) Durgadevi (5) Manu Jaisi and (6) Rama Chandra Jaisi. In pursuance of the said application of the plaintiff, the Settlement Department (Defendant no.5) referred the said application to the Government of Mizoram vide letter No.DST.8/AGRI/81-83(Part)29 dt.28.10.1983. Thereafter the Under Secretary to the Government of Mizoram, Settlement Department vide his letter No.LRR/PLAN-4/84/11 dated 31st August 1984 addressed to the Deputy Commissioner, i/c Revenue & Settlement, Aizawl District had approved the application for conversion of the plaintiff's land covered by House Pass No.160 of 1965 into different House sites. However, without the knowledge and consent of the plaintiff, the following persons namely – (1)Shri Lalbiakliana, (2) Sh.J.L.Thangluaia (3) Sh.Lalthangpuia (4) Smt.Kawlhmingliani, (5)Smt.Thangzovi and (6) Sh.Z.Lalramliana in collusion with the Assistant to the Deputy Commissioner (ADC) i/c Revenue & Settlement had obtained House Passes over the land covered by the plaintiff's House Pass No.160 of 1965. As soon as the plaintiff came to know of this illegal issuance of House sites, he had approached the Hon'ble Minister i/c Revenue & Settlement, Defendants no.5 and no.3 for cancellation of the passes issued to the aforementioned six persons. Consequently, the ADC i/c Revenue & Settlement Aizawl had cancelled the passes of three persons namely – (2) Smt.Kawlhmingliani House Pass No.1173 of 1984, (2) Smt. Thangzovi House Pass No. 1174 of 1984 and (3) Sh.V.L.Biakliana House Pass No.1177 of 1984 but did not cancelled the other three House Passes of (1) Shri J.L.Thangluaia (2) Sh.Z.Lalramliana and (3) Smt. Lalthangpuii till date. When the plaintiff came to know that the other three House Passes had not been cancelled, he then submitted a petition to the Minister i/c Revenue & Settlement, the Director, Revenue & Settlement Department and the Deputy Commissioner i/c Revenue & Settlement. But nothing had been done to cancel the said three House Passes belonging to Defendants No.7,8 & 9 which were located within the plaintiff's land.

In the meantime, the Defendant No.5 was intending to re-allot the plaintiff's land to Sh.C.Lalbiakliani instead of cancelling the Passes already issued to the Defendants No.7,8&9 illegally. The Defendant No.5 was further intending to issue Land Settlement Certificate (LSC) to the said Defendant no.7,8&9 over the land of the plaintiff. The Defendant No.8 wrongfully entered into the land of the plaintiff and cut down six numbers of trees planted by plaintiff and collected vegetables from there unscrupulously.

The Defendants no.3,4&5 had deprived the plaintiff of an area of land about 1710 Sq.metres from the land he rightfully purchased from Shri Lalhleia and further the Defendants had an intention to take some more portions from the plaintiff's land to be given to others.

The action of the Defendants No.4&5 in their issuing House Passes to Defendants no.7,8&9 is illegal, whimsical, arbitrary and malafide. The cause of action arose against Defendants namely – Sh.Z.Lalramliana, Sh.J.L.Thangluaia and Smt.Lalthangpuii as they had been issued House Passes within the plaintiff's land by the ADC i/c Revenue & Settlement, Aizawl vide Memo No.R.14022/2/84-DC(A)/85 dated 1st April 1985. The plaintiff served Legal Notice u/s 80 CPC 1908 against defendant no.1-6. The plaintiff therefore prays the following reliefs :-

- 1) A decree declaring the plaintiff as the rightful owner of the suit land measuring an area of 4.97 bighas covered by Village Council House Pass No.160 of 1965.
- 2) A decree declaring that the Order of the ADC i/c Revenue & Settlement Aizawl District issued vide Memo No.R.14022/2/84-DC(A)/85 dated 1st April 1985 as null and void.
- 3) A decree declaring that House Pass No.1175 of 1984, 1176 of 1984 and 1178 of 1984 issued to defendants no.7,8&9 respectively are null and void.
- 4) A decree declaring that the Defendants no.7,8&9 do not have rights over the land covered by House Passes No.1175 of 1984, 1176 of 1984 and 1178 of 1984 respectively and the plaintiff has the right, title and interest over the suit land.
- 5) By way of mandatory injunctions, the Defendants No.1-6 be restrained from issuing LSC to Defendants no.7,8&9 and Passes to any other person within the plaintiffs land and the Defendants no.7,8&9 be restrained from erecting any structure within the suit land.
- 6) A decree allowing the plaintiff to enjoy peaceful possession of the land measuring an area of 4.97 bighas covered by VC House Pass No.160 of 1965.
- 7) Cost of the suit may be decreed in favour of the plaintiff.
- 8) Any other reliefs to which the plaintiff is entitled according to equity, justice and good conscience.

On the other hand, the Defendants No.1-6 submitted their joint written statement and contested that the suit is not maintainable in its present form and prayer. It is barred by law of limitation. The plaintiff's House pass No.160 of 1965 which he relied on for title is void ab initio. The plaintiff has no title over the suit land and the House sites allotted to the Defendants no.7,8&9 fall outside the

land of the plaintiff, hence the plaintiff has no locus standi to file the instant suit. The Defendants No.1-6 prayed this court to pass an order of dismissal of the suit on the abovementioned grounds.

Defendants No.7&9 submitted their joint written statement. In their written statement, the Director, Land & Revenue Department, Mizoram proposed House site plan for eight persons below the House site of the plaintiff at Zemabawk in 1982. House Site pass No.1175 of 1984 covering an area of 779.72 Sq.m had been allotted to defendant no.7 and the said House site had been converted into LSC (Land Settlement Certificate) No.2162 of 1985 in the month of June 1985. At the same time, House Site Pass had been issued to the following five persons namely :-

1) Z.Lalramliana Plot No.3-House Pass No.1176 of 1984 (2) Smt.Lalthangpuii for plot No.2-House Pass No.1178 of 1984 (3) Smt.Kawlhmingliani for plot No.5-House Pass No.1173 of 1984.(4) Smt.Thangzovi for plot no.6-House Pass No.1174 of 1984 (5) Sh.C.Lalbiakliana for plot No.7-House Pass No.1177 of 1984. However, one Shri Gopal Jaisi had submitted complaint to the Hon'ble Minister i/c Revenue about the issuance of House Passes to the aforementioned persons. Accordingly, Scrutiny Committee under the Chairmanship of the Deputy Commissioner, Aizawl District had been formed to look into the matter. The said committee visited and recommended that the plot No. 5,6&7 i.e. House Pass No.1173 of 1984, House Pass as No.1174 of 1984 and House Pass No.1177 of 1984 be cancelled as they all fall within the land of Gopal Jaisi. At the same time, the said committee spot verification revealed that the plot no.2,3&4 fell outside the land of Gopal Jaisi and as such House Pass in favour of defendants no.7,8&9 were valid and proper vide committee Report No.R.14011/North/3/84-DC(A)/84(O) Dated 20th Feb 1985. The defendant stated that in the year 1986, three persons namely Smt.Kawlhmingliani, Sh.Lalbiakliana and Sh.Lalsiama had been issued House Passes for their respective lands located much closer to the land of the plaintiff. However, the plaintiff did not make any complaint in this regard while he made a complaint to the lands which were located far from the plaintiff's land. The defendant by contesting the case stated that the transfer of land from Mr.Lalhleia to the plaintiff by way of sale is illegal as per the provision of the Mizo District (Transfer of Land) Act 1964, hence the case is liable to be dismissed. The defendant added that the Director of Land Revenue & Settlement Department vide its letter No.DGR/HP-2/82/15 dated Aizawl 11th February 1982 stated that no House Pass/Garden Pass be issued by Village Councils. Hence, Passes issued by Village Councils prior to the aforesaid order is not valid and thus the Garden pass No.160 of 1965 in favour of the plaintiff is null and void. Defendants further stated that the Garden Pass possess by the plaintiff is illegal as he is non-Mizo as the existing Rule does not permit him to possess such Pass in Mizoram. Defendants stated that the boundaries of the Garden pass No.160 of 1965 had been clearly described but the area of the said land had been left blank. The plaintiff wrongfully claimed the land covered by House Pass No.2162 of 1985 which fall outside the land of the plaintiff. Defendant no.10 namely Chawnghranga had submitted his petition for impleadment as one of the defendants on dt.13.03.2002 and his petition was granted on 13.04.2009. Accordingly he was made one of the defendants as defendant no.10. He submitted his written statement of defence stating that he had a plot of land covered by LSC No.4515 of 1986 at Zemabawk, Thuampui veng, Aizawl which was issued to him

by the Revenue Department. The said land falls within the suit land, hence he has a right to take part in the instant suit and thus joined as defendant no.10. The defendant no.10 stated that the plaintiff claimed about 8 bighas of land through Village Council Pass No.160 of 1956. However, the said Pass did not give the plaintiff any legal title to be deprived by him in view of the Mizoram (Land Revenue) Act 1956. The Revenue Department, Government of Mizoram by an Office Order No.DLR/HP/RA.5/74/43 dated 25th April 1974 had canceled all Village Council House Passes in Zemabawk area and as such the House Pass No.160 of 1956 belonging to the plaintiff had automatically cancelled by virtue of the said order and thus all the rights, title and interest of the plaintiff that allegedly accrued therefrom on the plaintiff had been taken away. The said defendant further stated that the Mizoram (Transfer of Land) Act 1963 prohibited that no land in Mizoram shall be sold, mortgaged, leased, bartered gifted or otherwise transferred by a tribal to a non-tribal except with the previous permission of the concerned authority. As the plaintiff has no such permission from concerned authority, his purchased of land is null and void. In the circumstances aforementioned, the defendant no.10 stated that his right shall prevail over the right of the plaintiff as possession of LSC shall be deemed to be conclusive proof that the land has been settled with the holder of the certificate(LSC) and interest rights etc. arising out of such settlement have been vested with such holder of the certificate. The land of defendant no.10 situated between the land of Smt.Thangpuii and proposed road. He prayed this court to dismiss the instant suit stating that the plaintiff has no locus standi to filed the suit.

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

- 1) Is the suit maintainable in its present form and prayer ?
- 2) Is the suit barred by the principles of resjudicata, waiver, estoppels or acquiescence ?
- 3) Has the plaintiff acquired any right, title, interest and possession over the suit land ?
- 4) Is the House Pass No.160 of 1965 relied on by the plaintiff void ab initio ?
- 5) Do the House Sites allotted to the defendants 7-10 fall outside the land allotted to the plaintiff ?
- 6) Is the plaintiff entitled to the decree and order as prayed for ?
- 7) To what other reliefs, if any, is the plaintiff entitled ?

The plaintiff examined four witnesses while defendant no.1-9 examined no witnesses and defendant no.10 examined one witness. During the course of trial, the defendant no.7 namely J.L.Thangluaia and the plaintiff entered into a compromise by which the said defendant purchased the land covered by LSC No.Az1-2162 of 1985 measuring an area of 595 Sq.m from the plaintiff. Thus the dispute came to an end between defendant no.7 and the plaintiff.

Issue No.1: Is the suit maintainable in its present form and style ? The instant suit had been filed by the plaintiff in the year 1986 by presenting plaint against the Government of Mizoram and three other private defendants. Later defendant no.10 was impleaded by himself as one of the defendants at the stage of argument. At the time of institution of the suit, the duplicate suit land was valued

at Rs.25,000/- only. The plaint had been filed in supplicate with requisite number of photo copies of plaint for supply to the defendants. It appeared no defects in the plaint. Hence issue no.1 is decided in favour of the plaintiff.

Issue No.2: Is the suit barred by principle of waiver, estoppels and acquiescence. As per the deposition of Pw 2 (wife of the plaintiff) the family shifted to Thuampui veng in the month of April 1964 and purchased a land from one Lalhleia under Village Council Pass in his (Lalhleia) name. The next year i.e.1965, the Village Council authorities issued Pass in the name of her husband (Bishnu Prasad Jaisi-plaintiff) They constructed a dwelling house over the land and settled over there ever since then. In the year 1982, the family applied to the Director, Land Revenue & Settlement Department, Mizoram for conversion of the Village Council Pass into House Pass for persons namely –(1) Bishnu Prasad Jaisi (2) Lalchhani (3) Chhalikala (4) Durga Devi (5) Manu Jaisi and (6) Kamachandra Jaisi for which the Government of Mizoram issued sanction for the conversion. During the process of such conversion, the following six persons in collusion with the Land Revenue authorities made House Passes and issued the passes namely – (1) Biakliana (2) Thanzovi (3) Kawlhmingliani (4) Thanpuia (5) Ramlia and (6) J.L.Thangluaia. As a result of which they submitted complaint to the authority. Thus the House Passes of (1) Mr.Biakliana, (2) Smt. Thanzovi and (3) Smt. Kawlhmingliani were cancelled by the authority. The matter of land dispute had been dealt with by the Department for years but could not solve the problem. Hence the plaintiff instituted the instant suit in the year 1986. It appeared from the deposition that the plaintiff took action as soon as they came to know that six persons were issued House Passes clandestinely. Hence it is evident that there had been no undue delay in filing the instant suit. The suit had been filed in time. Hence issue no.2 is decided in favour of the plaintiff.

Issue No.3: relates to as to whether the plaintiff has acquired any right, title, interest and possession over the suit land ? From the depositions of the plaintiff and his other witnesses, it is revealed that the plaintiff had purchased the suit land from one Lalhleia in the year 1964. Soon after the land was purchased, the plaintiff constructed a dwelling house over the suit land without any obstruction by others. However, after about 17 years of peaceful possession, the present defendants no.7-10 claimed the land on the strength of their House passes lately issued to them. Eversince the plaintiff purchased the suit land, he had been paying land revenue to the concerned department up till the institution of the suit. Original copies of Cash Receipt for payment of Zoramchhiah and Tax on House/LSC/House Pass are annexed in the plaint and are marked as Exhibit No.VI-1, VI-2, VI-3, VI-4, VI-5, VI-6 and VI-7. The payment of taxes on the land to the department of Land Revenue & Settlement by the plaintiff indicated that the plaintiff was the owner of the suit land. On being the owner, he acquired rights, title and possession over the suit land. Hence issue no.3 is decided in favour of the plaintiff.

Issue No.4: Is the House Pass No.160 of 1965 relied on by the plaintiff void ab initio ? As has mentioned in the foregoing issue, the plaintiff purchased the House Site from one Lalhleia in the year 1964. The plaintiff was thereafter issued House Pass No.160 of 1965 by the Village Council authority in the next year. Eversince the plaintiff purchased the land from Lalhleia, he had regularly paid land revenue tax to the Government of Mizoram up till he filed the instant

suit. Payment of revenue tax on Zoramchhiah and tax on House/LSC/House pass to the Government would mean that the Government of Mizoram had accepted and recognized the House Pass No.160 of 1965 as valid. In support of the deposition, Pw 2 on behalf of her husband plaintiff exhibited a Photostat copy of House Pass No.160 of 1965 issued by Village Council Circle –II, Zemabawk without objection from all the defendants. There was no rebuttal evidence against the deposition of the plaintiff witnesses in respect of the House Pass 160 of 1965. On careful perusal of the depositions of the Pws and on careful examination of the document as Exhibits, it has been revealed that the Village Council Circle –II Zemabawk had issued House Pass No.160 of 1965 to the plaintiff and the plaintiff accordingly paid requisite taxes in respect of his House Pass to the Government regularly up till the institution of the suit which implied that the House Pass No.160 of 1965 is valid and genuine. Accordingly the issue no. 4 is decided in favour of the plaintiff.

Issue No.5: Do the House sites allotted to Defendants No.7-10 fell outside the land of the plaintiff. This issue no.5 had been framed before the defendant no.10 was impleaded as one of the defendants. Hence defendant no 10 would also be included in this issue. As per the depositions of the Pws, the plaintiff purchased the land (now suit land) from one Lalhleia which was located at Zemabawk area in the year 1964. The Village Council authority issued House pass No.160 of 1965 to the plaintiff the following year. The plaintiff and his family constructed a dwelling house over the land and stayed overthere since then. In the year 1982, the plaintiff applied to the Director, Land Revenue & Settlement Department, Government of Mizoram for conversion and furcation of the House Pass into six House Passes. However, in collusion with the Revenue Department, the private defendants obtained House Passes within the land of the plaintiff. During the course of trial of the instant suit, the defendant no.7 namely Sh.J.L.Thangluaia who among the others was issued House Pass within the plaintiff's land had entered into a compromise with the plaintiff by purchasing the area measuring about 595 Sq.m from the plaintiff, this clearly indicated that the House sites allotted to the defendants no.7-10 fall within the land of the plaintiff. Hence this issue is decided in favour of the plaintiff.

Issue No.6&7: These two issues are taken together for the sake of convenience. The two issues related to as to whether the plaintiff is entitled to the decree and order or any other reliefs as prayed for. All the foregoing issues have been decided in favour of the plaintiff. Hence these two issues of same nature do not seem to pose an obstacle in deciding and granting reliefs to the plaintiff. As had mentioned in the foregoing issues, the deposition of the plaintiff's witnesses relating to the House Pass had not been objected to by the defendant's lawyer present in the court at the time of the deposition. All the documents relied on by the plaintiff were admitted without objection. Hence documents admitted had given weight as had decided by the Hon'ble Supreme Court of India and Orissa High Court in the case of Sitaram Motilal Kalal, Appellant – Vs- Santanuprasad Jaishanker Bhatt, Respondent, AIR 1966 SC 1967 (1966) 1, SCWR 974 : The Supreme Court held that "Admission of documents means admission of facts contained in the documents" and in the case of Budhi Mahal Vs- Gangdhar, 64 Cut LT 287, it was decided that "When a documents has been admitted without objection, it means entire contents thereof are admitted.

The plaintiff therefore exhibited the following documents :-

- 1) Ext-I-P is the copy of House Pass.
- 2) Ext-I-P-II is certified copy of sanctioned from the Governments for conversion of the House Pass into LSCs.
- 3) Ext-I-P-III is the copy of cancellation order in respect of Passes issued to Shri Biakliana (2) Smt.Thanzovi and (3) Kawlhmingliani.
- 4) Ext-I-P-IV is photo copy of Stay Order.
- 5) Ext-I-P- V is Notice u/s 80 CPC and acknowledgment on the body.
- 6) Ext-I-P-V(1) is Receipt of Notice.
- 7) Ext-I-P-V(2) is A/D of Notice.
- 8) Ext-I-P-VI(1) to (7) is original copies of Receipt of Tax paid.
- 9) Ext-I-P-VII is Tax Clearance Certificate.
- 10) Ext-I-P-VIII, IX, X, XI, XII & XIII are correspondences.
- 11) Ext-I-P-XIV is Letter written by Lalhleia (the person from whom the plaintiff purchased the VC Pass)

Having finally decided all the issues in favour of the plaintiff, this court has granted the following reliefs to the plaintiff :

- 1) The plaintiff is the rightful owner of the land covered by House Pass No.160 of 1965 measuring the area as mentioned in the said pass.
- 2) The House Pass and LSCs issued in favour of the defendants no.8,9&10 overlapped with the land of the plaintiff hence the House pass and LSCs of the defendants no.8,9&10 are null and void.
- 3) The defendants no.8,9 & 10 are hereby restrained from interfering in any way and erecting structures within the plaintiff's land covered by House Pass No.160 of 1965.

Parties shall bear their own cost.

Having decreed the suit as above, the instant suit is accordingly disposed of.

Pronounced in Open Court in presence of parties.

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

Memo No. /SCJ-I I(A)/2012: Dated Aizawl the 23rd July, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Bishnu Prasad Jaisi, S/o Robilal (L) Zemabawk, Aizawl, Mizoram C/o Shri W.Sam Joseph, Advocate.
3. State of Mizoram, (Represented by the Chief Secretary to the Government of Mizoram) through Asst. Govt. Advocates.
4. The Govt. of India, (Through the Secretary, Ministry of Home Affairs, New Delhi)
The Deputy Commissioner, i/c Revenue Department, Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
5. The A.D.C, i/c Revenue Department, Govt. of Mizoram, Aizawl through Asst. Govt. Advocates.
6. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department ,Aizawl, Mizoram through Asst. Govt. Advocates.
7. The Director, Land Revenue & Settlement Department, Aizawl, Mizoram through Asst. Govt. Advocates.
8. J.L.Thangluaia, S/o Saitawna, R/o Bawngkawn, Aizawl, Mizoram.
9. Z.Lalramliana, S/o Hrang, R/o Bawngkawn, Aizawl, Mizoram.
- 10.Lalthangpuii, D/o Kapthanga, R/o Bawngkawn, Aizawl, Mizoram.
- 11.Rev.Chawnghranga, S/o Thangvunga (L) R/o Thuampui veng, Zemabawk, Aizawl C/o Shri M.M. Ali, Advocate.
- 12.Registry Section.
- 13.Case record.

PESHKAR