

IN THE COURT OF SHRI R.VANLALENA, SENIOR CIVIL JUDGE AT  
AIZAWL.

Civil Suit No.57/08.

Sh.Belfuha alias Bela  
R/o Chhim Veng,  
Vairengte, Mizoram

.... Plaintiff.

-Vrs –

1.The State of Mizoram represented by the  
Chief Secretary to the Govt. of Mizoram, Aizawl.

2.The Secretary to the Govt. of Mizoram, Land  
Revenue & Settlement Dept, Aizawl.

3.The Director, Land Revenue & Settlement Dept,  
Govt. of Mizoram, Aizawl.

4. The Secretary to the Govt. of Mizoram,  
Power & Electricity Dept, Aizawl.

5. The Chief Engineer,  
Power & Electricity Dept, Aizawl.

6. The Executive Engineer,  
Electrical Construction Division,  
Power & Electricity Dept,  
Govt. of Mizoram, Aizawl.

8.The Deputy Commissioner,  
Kolasib District, Kolasib,

.... Defendants.

**P R E S E N T S**

MR.R.VANLALENA, M.J.S., SENIOR CIVIL JUDGE.

For the Plaintiff	:	Mr.C.Lalramzauva, Sr.Advocate Mr.A.R.Malhotra, Advocate.
For the Defendant No.1 – 8:	:	Shri R.K.Malsawmkima, Asst.Govt. Advocate
Date of hearing	:	07.02.2012
Date of Judgment	:	06.03.2012

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### JUDGMENT AND DECREE

1. The instant suit has been filed for declaration that the Plaintiff's land under P.Patta No.409/80 located at Vairengte was illegally and forcibly occupied by the Defendants No.4 – 6 for the purpose of a power station since February, 1982 and that he is entitled to payment of rent since February, 1982 along with compensation for the destruction of his fruit trees and for a decree cancelling the DLL No.5/08 issued in favour of the Defendant No.4 to the extent it overlapped the P.Patta No.409/80.

2. The case of the Plaintiff in brief is that he was allotted a plot of agricultural land by the Defendants No.2 & 3 vide P.Patta No.409/80 covering an area of 2 hectares, under Section 4(2) of the Mizo District (Agricultural Land) Act, 1963 and thereafter he had acquired the status of a Periodic Patta holder as defined under Rule 2(8) of the Mizo District (Agricultural Land) Rules, 1971. His land is located at Vairengte and that after allotment in the year 1981 he had developed the same by planting different varieties of fruit trees such as orange, hatcora, banana, coconut, lichoo, guava, papaya, tamarind, jack fruit and lemon. He had regularly paid all the Revenue Tax and his P.Patta No.409/80 is renewed up to 2010. While he was enjoying peaceful possession of the said plot of land, the Defendants No.4-6 had, without his knowledge and permission, illegally encroached upon his land by constructing a power station within it. He had submitted a representation dt.26/2/82 to the Defendant No.6 wherein he had prayed for payment of necessary compensation for the different varieties of fruit trees that were destroyed by the Defendant No.4-6. In pursuance of the representation, the Defendant No.6 vide letter Memo No.EE.AC/T – 32/559 – 61 dt.19/5/83 addressed to the Sub-Divisional Officer, Electrical Construction Sub Division, Kolasib had requested him to submit a detailed report. Subsequently when the then EE, Construction Division, P&E namely Sh.V.L.Rema had visited Vairengte, the said plot of land was visited by him on 4/3/84 along with the Plaintiff and the then President, Vairengte Village Council and it was verified on the spot that he had developed his land and that his land was encroached upon by the defendants No.4-6. It was agreed in writing that if compensation for the trees planted in the area to be acquired was paid to him in accordance with the Govt. compensation rate, he would agree to let the same be acquired. As per the said agreement Sh.Vanlalchhawna, JE and he were to verify the number of trees within three days and to submit the same to the Divisional Officer after which the opinion of the Govt. was to be obtained. Accordingly, Sh.Vanlalchhawna, J.E. had checked and counted the plants in his presence and he had submitted his report dt.8/3/84 to the Defendant

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No.6 wherein he had clearly mentioned the different varieties of fruit trees and the number of each kind of varieties of fruit trees. Since there was no positive response from the Defendants he had submitted another representation dt.20/8/84 to the Defendant No.6 requesting him to give employment to his two sons in exchange for the compensation for the illegal encroachment of his land by the Defendant no.4-6. The Defendant No.4-6 had appointed only one of his sons namely Sh.K.Lalthana as work charge Chowkidar vide the Office Order No.56 dt.28/9/84 issued by the S.E., Aizawl Electrical Circle, Aizawl, without giving any employment to his second son. As the Defendant No.4-6 could not fully comply with his demand, he had approached the Defendants No.4-6 on several occasions by submitting representations demanding compensation for his fruit trees and also for payment of rent or in the alternative for giving employment to his children. Subsequently the Sub-Divisional Officer, Vairengte Power Sub-Division, Vairengte vide letter No.VPSD/G-11/03/Vol – I/69 dt.5/6/07 addressed to him had requested him to meet him on 6/6/07 in connection with the boundary of the land belonging to the Electric Department. He had met the said person on 6/6/07 but no settlement could be made. While he was waiting for some positive response from the Defendants No.4-6, he gained knowledge that the Defendants No.2&3 had issued a land lease under DLL No.5/08 in favour of the Defendant No.4 for a period of 25 years, illegally overlapping the land covered by his Periodic Patta No.409/80. He had written a representation dt.4/2/08 to the Sub-Division Officer, P&E Department, Vairengte wherein he had requested the said Sub-Divisional Officer to give him information as to how the Department had obtained LSC without any 'No Objection Certificate' from him, how could the Department obtain LSC without payment of compensation to him and whether it was legal for the Department to get LSC issued for land for which tax has already been cleared up to date and the Pass having been renewed up to the year 2010. In the said representation dt.4/2/08 he had also requested for payment of compensation. The said representation dt.4/2/08 was forwarded by the SDO, Vairengte Power Sub-Division, Vairengte to the Defendant No.6 for consideration and the Defendant No.6 vide letter Memo No.A-60015/2/01 – KPD/29 dt.13/2/08 addressed to him had informed him that the said LSC was issued as he had signed the 'No Objection' in the application form. In reply he had written a letter dt.8/4/08 to the Defendant No.6 denying that he had signed the 'No Objection' and with the request to cancel the said land lease.

The action of the Defendants No.2 & 3 in issuing the Land Lease DLL No.5 of 2008 in favour of the Defendant No.4 by overlapping the land covered by P.Patta No.409/80 belonging to him was illegal and arbitrary. As per the procedure followed by the

Defendants No. 2 & 3 in the case of overlapping of Passes, the Pass which was issued earlier in time is considered to be valid while the Pass which was issued later in time is cancelled. Since the P.Patta No.409/80 issued in his favour was issued prior in time to the DLL No.5/08 issued in favour of the Defendant No.4 it is clear that the P.Patta No.409/80 is to be declared valid and issued in accordance with law while the DLL No.5/08 is liable to be cancelled. As per the procedure followed by the Revenue Department for issuance of Passes it is necessary for the applicant to obtain 'No Objection Certificate' from the neighboring land owners but in the present case even though he had not given any 'No Objection Certificate' in favour of the Defendants No. 4 – 6 but the Defendants No. 2 & 3 had illegally issued the DLL No.5/08 in favour of the Defendant No.4 without complying with the formalities required by law. Hence, the DLL No.5/08 issued in favour of the defendant No.4 is liable to be declared invalid and cancelled. In fact, with regard to the Letter No.A-60015/2/01/KPD/29 dt.13/2/08 written by the E.E., Kolasib Power Division to him, even if he had signed the 'No Objection' in the application form, this did not mean he had given permission for the Defendants No.2 & 3 to issue Revenue Pass in favour of the Defendants No. 4 – 6 by overlapping his land covered by P.Patta No.409/80. It could only mean that he had no objection if the Defendants No.4–6 were issued a Revenue Pass by the Defendants No.2&3 for land neighboring his land and not encroaching upon his land.

3. The Defendants No. 1 – 7 had contested the suit by filing a written statement wherein apart from taking some preliminary objections the Defendants No.1 – 7 had denied that the Plaintiff had ever made any complaints to the Revenue Department in connection with the alleged encroachment by the Power & Electricity Dept. The DLL No. 5/08 issued in favour of the Defendant No. 4 was issued after obtaining No Objection Certificate and the Plaintiff had voluntarily put his signature in the NOC form. The Defendants were not liable to pay any rent as compensation to the Plaintiff as the land was obtained in normal procedure.

4. On the basis of the pleadings of both parties the following issues were framed :-

(1) Whether the suit is maintainable in its present form and style.

(2) Whether the suit is filed with malafide .

(3) Whether the suit is barred by the law of limitation, estoppels and acquiescence.

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(4) Whether the land of the Plaintiff under P.Patta No.409/80 is overlapped by the land lease DLL No.5/08 issued in favour of the Defendant No. 4.

(5) Whether the land lease DLL No. 5/08 issued in favour of the Defendant No. 4 is legal and valid as per law.

(6) Whether the land belonging to the Plaintiff under P.Patta No. 409/80 has been forcibly and illegally occupied by the Defendants No. 4-6 with effect from February 1982 till date.

(7) Whether the Plaintiff is entitled to the reliefs sought for in this suit.

5. The Plaintiff produced three witnesses including himself while the Defendants failed to produce any witness.

6. The Plaintiff in his deposition had repeated what was stated in his plaint and he exhibited the following documents :-

Exb 1. Copy of the P.Patta No 409/80 allotted to the Plaintiff.

Exb 2. Copy of the representation dt.26/2/82 submitted by the Plaintiff to the Defendant No.6.

Exb 3. Copy of letter dt. 19/5/83 written by the Defendant No.6 to the S.D.O, Electrical Construction Sub Division, Kolasib.

Exb 4. Copy of the Agreement dt.4/3/84.

Exb 5. Copy of the Report dt.8/3/84 submitted by Vanlalchhawna J.E to the Defendant No.6.

Exb 6. Copy of the Representation dt.20/8/84 submitted by the Plaintiff to the Defendant No.6.

Exb 7. Copy of the Representation dt.1/9/03 submitted by the Plaintiff.

Exb 8. Copy of the Representation dt.27/11/06 submitted by the Plaintiff.

Exb 9. Copy of the letter dt.5/6/07 written by the S.D.O, Vairengte Power Sub Division, Vairengte to the Plaintiff.

Exb 10. Copy of the land lease DLL No. 5/08 issued in favour of the Defendant No.4.

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Exb 11. Copy of the Representation dt.4/2/08 written by the Plaintiff to the S.D.O, P&E D eapartment, Vairengte.

Exb 12. Copy of the letter dt.13/2/08 written by the Defendant No.6 to the Plaintiff.

Exb 13. Copy of letter dt.8/4/08 written by the Plaintiff to the Defendant No.6.

Exb 14. Copy of the Tax Payee Certificate dt.16/10/08.

In his cross examination he denied that he was not issued P.Patta No.409/80 by the revenue authorities, he did not renew the validity of his P.Patta No.409/80, he did not develop his land by planting different fruit trees, he did not submit the Representation dt.26/2/82 to the Defendant No.6 and that the DLL No.5/2008 did not encroach his land covered by P.Patta No.409/80.

7. The PW namely Zamzela deposed that he was the President of Vairengte Village Council during the year 1984. When the E.E, Construction Division namely V.L.Rema had visited the 66 KV Sub-Station Compound at Vairengte on 4/3/84 he had accompanied him along with the Plaintiff. At the time of spot verification it was verified that the Plaintiff had developed his land and they had seen orange trees in his garden. It was decided that Pu Vanlalchhawna, J.E and the Plaintiff would count the different varieties of fruit trees and submit their report to the Divisional Office within three days after which the opinion of the Govt. would be taken. He had put his signature in the report dt.4/3/84. In his cross examination he admitted that he did not know the number of orange trees planted by the Plaintiff in the suit land. He denied that his statements made in the examination in chief affidavit were all false.

8. The Court Witness namely Vanlalchhawna had deposed that during March 1984 he was posted as J.E at Vairengte. As per the instruction of the then E.E, Construction Division, P&E Department namely V.L.Rema he had conducted spot verification of the land belonging to the Plaintiff on 7/3/84. He had submitted his report dt.8/3/84 to the Executive Engineer, Electrical Construction Division, Aizawl and in his report he had clearly stated the different types of fruit trees and the number of the said fruit trees which were physically present at the time of his verification. Exb-5 was his report and Exb-5 (a) was his signature. In his cross examination he stated that the location of the site was at the outskirts of Vairengte Village near about Supply Godown. He was accompanied by some of his staff members but he did not remember as to whether the owner of the said plot of land was present when he conducted the spot verification because it had

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been a long time. He had not verified as to whether the claimant had any valid document for the said plot of land for claiming the compensation because he was not instructed to look into that side of the matter. The fruit trees as on the date of his verification were all young plants.

9. Issue No.1&2

These two issues are taken up together for convenience sake. The evidence on record proves that the Plaintiff has a cause of action in his favour against the Defendants for occupying his land covered by P.Patta No.409/80 without his permission. The Plaintiff has also paid Rs.5000/- as court fees. Hence, these two issues are decided in favour of the Plaintiff.

10. Issue No.3

The next issue to be decided is whether the suit is barred by the law of limitation, estoppel and acquiescence. According to Article 65 of the Limitation Act, 1963 the starting point of limitation does not commence from the date when the right of ownership arises to the Plaintiff but commences from the date the Defendants possession becomes adverse. As per the decision of the Apex Court in the case of ***Saroop Singh Vrs Banto & Ors reported in (2005) 8 SCC 330***, it has been held that unless the plea of adverse possession was raised by the Defendants the suit could not be barred by limitation. In the case of ***Roushanara Begum (MUSTT.) Vrs Muslim Ali reported in 2001 (3) GLT 302*** the Gauhati High Court by relying in certain decisions of the Apex Court has held that a person pleading adverse possession has to prove the same and it is for him to clearly plead and establish all facts necessary to establish his adverse possession. In the absence of complete and sufficient pleadings, the plea of adverse possession will be of no avail. In the present case the Defendants apart from claiming in their written statement that the suit is barred by the law of limitation have even failed to take the plea that the suit was barred by limitation due to adverse possession in favour of the Defendants. Further in any case the revenue authorities had issued the lease i.e DLL No 5/2008 in favour of the Defendant No.4 only in January, 2008 and the present suit was filed in the month of October, 2008 hence it is clear that the suit is not barred by the law of limitation as it was filed within 12 years from the date of the issuance of the lease in favour of the Defendants. Accordingly the suit is held not to be barred by the law of limitation and Issue No.3 is decided in favour of the Plaintiff.

11. Issue No.4 & 6

These two issues are taken up together as they are co-related. The oral and documentary evidence adduced by the Plaintiff and his witnesses prove that the Plaintiff was allotted a plot of land

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measuring 2 hectares located at Vairengte by the revenue authorities under P.Patta No.409/80 and that he had developed the said suit land by planting different varieties of fruit trees. The evidence on record also proves that when spot verification was conducted on 4/3/84 in the presence of the then E.E, Electrical Construction Division namely V.L. Rema and the then President Vairengte Village Council namely Zamzela, the Plaintiff had developed his land by planting orange trees and that the Defendants had encroached his land. The deposition of Vanlalchhawna, J.E also proved that he had conducted spot verification of the suit land on 7/3/84 and he had submitted his report on 8/3/84 wherein it was verified that the Plaintiff had cultivated 10 different varieties of fruit trees within the suit land and all the fruit trees were young plants. Although the Defendants had claimed that the Plaintiff had put his signature in the 'No Objection Certificate' and that the land covered by the DLL No.5/2008 did not overlap the land covered by P.Patta No.409/80 but they failed to adduce any evidence to prove their pleadings. In view of the evidence on record it is held that the Defendants have illegally and forcibly occupied the suit land belonging to the Plaintiff, covered by P.Patta No.409/80, with effect from February, 1982 and the suit land covered by P.Patta No.409/80 was overlapped by land lease DLL No.5/08 issued in favour of the Defendant No.4. Issues No.4 & 6 are decided in favour of the Plaintiff.

12. Issue No. 5

This issue relates to whether the land lease DLL No.5/08 issued in favour of the Defendant No.4 is legal and valid as per law. The evidence on record has proved that the Plaintiff was issued P.Patta No.409/80 by the Defendants No.2&3 under Section 4(2) of the Mizo District (Agricultural Land) Act, 1963 and that he has acquired the status of Periodic Patta holder as defined under Rule 2(8) of the Mizo District (Agricultural Land) Rules, 1971 and that till date the said P.Patta No.409/80 has not been cancelled. On the other hand the Defendants No.2&3 had issued the DLL No.5/2008 in favour of the Defendant No.4 under Section II of the Mizo District (Land & Revenue) Act, 1956 r/w Rule 14 of the Mizo District (Land & Revenue) Rules, 1967 whereby the Defendant No.4 had acquired the status of Lessee as defined under Rule 2(7) of the Mizo District (Land & Revenue) Rules, 1967. In the case of overlapping of Passes it is the usual practice of the Revenue authorities to uphold the validity of the revenue pass which was issued prior in time. In the present case since the P.Patta No.409/80 which has been overlapped by the DLL No. 5/2008 was issued much prior in time it cannot but be concluded that the land lease DLL No.5/2008 issued in favour of the Defendant No.4 by the Defendants No.2&3 is illegal and not valid in law. Accordingly Issue No. 5 is decided in favour of the Plaintiff.

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13. Issue No.7

This issue regarding whether the Plaintiff is entitled to the reliefs sought for in the suit does not seem to pose any obstacle in view of the fact that all the other issues have been decided in favour of the Plaintiff. The Plaintiff in his suit has prayed for the following reliefs:

- a) For a decree in favour of the Plaintiff and against the Defendants.
- b) For a decree declaring that the Plaintiff's land covered by P.Patta No.409/80 has been illegally and forcibly occupied by the Defendants No.4 – 6 for the purpose of a Power Station since, February 1982.
- c) For a decree declaring that the Plaintiff is entitled to payment of rental compensation by the Defendants No.4 – 6 for the illegal and forcibly occupation of his land covered by P.Patta No.409/80 located at Vairengte since February 1980 along with interest as may be assessed by the Defendant No.7.
- d) For a decree declaring that the Plaintiff is entitled to compensation for the destruction of his food trees as verified by the JE (Electrical) Kolasib Electrical Circle, Sub Division Vairengte along with interest as assessed by the Defendant No.7.
- e) For a decree canceling the DLL No.5/08 to the extent in overlaps the P.Patta No.409/80 issued by the Defendant No.2 & 3 in favour of the Defendant No.4 since it was issued in violation of the prevailing Revenue Laws and since it illegally overlaps the P.Patta No.409/80 belonging to the Plaintiff.
- f) For costs of the suit, and
- g) For any other relief(s) as the Hon'ble Court may deem fit and proper.

The suit though contested by the Defendants, no evidence whatsoever has been adduced by them and the only evidence recorded by this Court is the evidence of the Plaintiff and his witnesses. In view of this, it cannot but be held that the Defendants have nothing to say against the reliefs sought for by the Plaintiff in this suit. However, the relief granted to the Plaintiff is confined to those mentioned at serial (a) to (e) above while this Court is of the view that parties are to bear their own costs. This issue is thus decided in favour of the Plaintiff as stated hereinabove.

14. Thus, the suit is finally decided and decreed as follows:

- i) The Plaintiff's land covered by P.Patta No.409/80 located at Vairengte having been illegally overlapped and encroached upon by DLL No.5/2008 issued in the name of the Defendant No.4, the said DLL No.5/2008 is declared invalid and void ab initio to the extent it has overlapped the land of the Plaintiff.
- ii) The Defendant No.4 – 6 are held liable to pay rental and other compensations payable to the Plaintiff for their illegal and forcible occupation of the land of the Plaintiff for the period of occupation from February, 1980 till date and for destruction of the crops and fruit trees belonging to the Plaintiff found within his land at the time of verification conducted by the JE concerned as per Exhibit 5.
- iii) The Defendant No.7 is directed to make assessment of the rental and other compensation payable to the Plaintiff as stipulated under (ii) above within a period of 2 months from the date of this decree and to submit the same to the department concerned (Defendants No.4 – 6) with a copy to the Plaintiff and
- iv) The Defendants No. 4 – 6 shall pay the amount so assessed to the Plaintiff within a period of 2 months from receipt of the said assessment.

15. The suit having been decreed as above is hereby disposed of accordingly.

Pronounced in the open Court in the presence of the parties today the 6th\_day of March, 2012.

**Sd/- R.VANLALENA**  
Senior Civil Judge  
Aizawl District, Aizawl.

Memo No..... SCJ-2(A)/2012 :Dated Aizawl, the 6<sup>th</sup> March, 2012.

Copy to :

1. The District & Sessions Judge, Aizawl Judicial District, Aizawl for information.
2. Sh.Belfuha alias Bela, R/o Chhim Veng, Vairengte, Mizoram
3. The State of Mizoram represented by the Chief Secretary to the Govt. of Mizoram, Aizawl through Asst. Govt. Advocate.
4. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Dept, Aizawl through Asst. Govt. Advocate
5. The Director, Land Revenue & Settlement Dept, Govt. of Mizoram, Aizawl through Asst. Govt. Advocate
6. The Secretary to the Govt. of Mizoram, Power & Electricity Dept, Aizawl through Asst. Govt. Advocate
7. The Chief Engineer, Power & Electricity Dept, Aizawl through Asst. Govt. Advocate
8. The Executive Engineer, Electrical Construction Division, Power & Electricity Dept, Govt. of Mizoram, Aizawl through Asst. Govt. Advocate
9. The Deputy Commissioner, Kolasib District, Kolasib, Mizoram through Asst. Govt. Advocate
10. Shri C.Lalramzauva & Ors., Advocate concerned.
11. Shri R.K.Malsawmkima, Asst. Govt. Advocate.
12. Registry Section.
13. Case Record.

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