

IN THE COURT SH.R.VANLALENA SENIOR CIVIL JUDGE AT AIZAWL

Declaratory Suit No.9/2005.

Sh. Vanlalsiama
R/o Zuangtui, Aizawl.

.....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,
Revenue Department, Aizawl.

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

4. The Asst. Settlement Officer-I,
Land Revenue & Settlement Department,
Govt. of Mizoram, Aizawl.

5. Sh.Vanthangpuia,
S/o Lalkhuma,
R/o Zarkawt, Upper Bazar, Aizawl.

... ..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.1-4 : Sh.R.K.Malsawmkima, Asst. Govt.
Advocate.

For the Defendant No.5 : Nil

Date of hearing : 3/5/12

Date of Judgment & Order : 24/5/1

JUDGMENT & DECREE

1. The instant suit has been filed for declaring that the House Pass No.25/96 located at Zuangtui, issued in favour of the Plaintiff by the Defendants No.1-4 is legal and valid being issued in accordance with law and that the LSC No.AZL-234/94 issued in favour of the Defendant No.5 being issued in violation of procedure laid down by law is null and void along with other consequential reliefs.

2. The case of the Plaintiff in a nutshell is that he was allotted a house site at Zuangtui vide House Pass No.25/96 under Section 3 of the Mizo District (Land and Revenue) Act, 1956 by the Defendants No.1-4 wherein he had constructed his dwelling house in the year 1992 and occupied the same. Initially in the year 1992 when he had started construction of his house, with the knowledge of Zuangtui Village Council, there was a complaint submitted by Sh.Lalbiakdika to the Defendants No.1-4 due to which a Stay Order vide Memo No.R.21011/47/92-DC(A) dt.17/3/92 was issued against him. Subsequently he had reached a written compromise with Sh.Lalbiakdika due to which the Defendants No.1-4 had issued the letter Memo No.R-21011/47/92-DC(A)/16 dt.27/4/92 lifting the Stay Order. He had finished constructing his house in the month of May, 1992 after which he had occupied it with his family. The Defendants No.1-4 after complying with all formalities and with prior approval of the Govt. vide Order No.K.52012/192/95-REV dt.12/12/95, had issued House Pass No.25/96 in his favour. The House Pass No.25/96 was valid till today as no cancellation Order had been passed cancelling it. Subsequently he had applied for issuance of LSC to the Defendants No.1-4. His application was processed and Sh.M.C.Rosanga, Surveyor was directed to demarcate his land. After demarcating his land Sh.M.C.Rosanga, Surveyor had submitted his report to the Defendant No.4 but Sh.V.Lianzinga, the then ASO-I had informed him that the area was a plan area and his application for issuance of LSC over the land covered by House Pass No.25/96 would be processed in due course. While he was living in his house with his family, without any problem for a number of years, the Defendant No.5 had belatedly submitted a representation dt.31/8/95 to the Defendant No.4 claiming that his land covered by LSC No.234/94 located at Zuangtui had been encroached upon by Sh.Thantluanga and Sh.Lalsiama. Later the Defendant No.5 had served him a legal notice dt.6/11/97 requesting him to vacate the suit premises within 30 days of receipt of the same. He being aggrieved had submitted a representation dt.19/11/97 to the Defendant No.4 requesting him to direct the Defendant No.5 not to disturb him. The Defendant No.5 had thereafter filed the Eviction Suit No.1/98 before the Sub-District Council Court, Aizawl praying for his eviction from the suit land. The Sub-District Council Court, Aizawl by Judgment & Order dt.8/3/05 had directed him to vacate the suit land within 30 days. Thereafter he had filed the appeal i.e. RFA No.20/05 before the District Council Court, Aizawl. The action of the Defendants No.1-4 in issuing LSC No.AZL

234/94 in favour of the Defendant No.5 without obtaining prior administrative approval of the Govt. through the Defendant No.3 was a clear violation of the procedure laid down for issuance of Land Settlement Certificate as prescribed by the Office Memorandum issued vide Memo No.LRR.207/88/66 dt.12/3/91 issued by the Defendant No.2. As per the Order Memo No.LRR/South-6/83/Pt/3(A) dt.4/9/87 issued by the Defendant No.2 no V.C Pass can be demarcated/nor process for conversion into LSC without prior approval of the Govt. and all such cases have to be necessarily referred to the Govt. for final decision. In the present case as LSC No.234/94 was converted from V.C Pass belonging to the Defendant No.5 without obtaining prior approval of the Govt., the same was issued in violation of the procedure laid down for issuance of LSC and liable to be declared null and void.

3. The Defendants No.1-4 had contested the suit by filing a written statement wherein they stated that as per Order dt.8/3/05 passed by Sh.Lalbiakzama, Magistrate 1st Class, Aizawl in Eviction Suit No.1/98, the Plaintiff had deposed that he had constructed an Assam type house building in the suit land in 1992 before obtaining any House Pass from the Revenue Department and without ascertaining whether the land was vacant or not. This was a clear violation of the law in existence and as a result the Plaintiff was directed to vacate the suit land belonging to the Defendant No.5 within 30 days from issuance of the eviction Order dt.8/3/05. The House Pass No.25/96 issued to the Plaintiff was not comparable with the LSC of the Defendant No.5. The Plaintiff has no cause of action in his favour and hence the suit was liable to be dismissed. The Department had accepted LSC No.AZL 234/94 as a genuine pass during the pendency of Eviction Suit No.1/98. The present case was barred by limitation.

4. The Defendant No.5 had also contested the suit by filing a written statement wherein he had claimed that the suit was barred by the principle of Res Judicata as the matter in issue was already decided by the Magistrate 1st Class, Aizawl in Eviction Suit No.1/98. He was allotted the suit land by the Durtlang V.C in 1985 after which he had also obtained NOC from the Forest Department. He had applied for LSC in the year 1994 with the recommendation of the Durtlang VCP and after observing all formalities the Revenue Department had settled the disputed land in his favour by issuing LSC No.AZL 234/94. The Plaintiff without obtaining permission from the concerned authority had started construction within the suit land in 1992 and thereafter he obtained House Pass without observing proper formalities from the Revenue Department in 1996. The validity of the House Pass No.25/96 was only for 2 years and as per para No.5 of its terms and conditions the pass holder was not the owner of the land. The Plaintiff had no right to claim the suit land in absence of proper document issued by the competent authority. The Magistrate 1st Class had rightly issued the eviction Order dt.8/3/05. The House Pass was not renewed till date and no tax was paid by the Plaintiff, as such mere possession of the suit land did not constitute ownership right. The ASO-I had

wrongly issued House Pass No.25/96 without confirming and without spot verification whether the suit land was vacant or not. The Govt. approval was not required for issuing LSC if administrative approval was given by the Director, Land Revenue & Settlement. Once land is settled in favour of any individual by the competent authority it cannot be taken back without following proper procedure laid down by law.

5. On the basis of the pleadings of the parties the following issues were framed:

- (1) Whether the suit is maintainable in its present form and style.
- (2) Whether the suit is barred by the principle of Res Judicata.
- (3) Whether the suit is barred by the principle of limitation and estoppel.
- (4) Whether the Plaintiff was rightly issued House Pass No.25/96 for the suit land.
- (5) Whether the LSC No.AZL 234/94 issued in favour of the Defendant No.5 was valid and legal.
- (6) Whether the said House Pass No.25/96 and LSC No.AZL 234/94 are over the same plot of land. If so, which one is to be treated as valid.
- (7) Whether the Defendant No.5 has a better title solely on the ground of the Order dt.8/3/05 passed in Eviction Suit No.1/98.
- (8) Whether the Plaintiff is entitled to the reliefs claimed.

6. The Plaintiff adduce evidence on his behalf while the Defendants failed to produce any witness. In fact by way of the Order dt.25/7/2011 the suit was proceeded ex-parte against the Defendant No.5.

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

- Exb.1 is the copy of Stay Order dt.17/3/92
- Exb.2 is the copy of letter dt.27/4/92
- Exb.3 is the House Pass No.25/96 issued in favour of the Plaintiff.
- Exb.4 is the LSC No.AZL 236/94 issued in favour of the Defendant No.5
- Exb.5 is the copy of the representation dt.19/11/97
- Exb.6 is the copy of Judgment & Order dt.8/3/05
- Exb.7 is the copy of Office Memorandum dt.12/3/91
- Exb.8 is the copy of Order dt.4/9/87

In his cross examination he admitted that he had lost both the Eviction Suit No.1/98 and RFA No.20/05 (arising out of Eviction Suit No.1/98) but in his re-examination he had stated that he had filed an appeal before the High Court

against the Judgments passed in Eviction Suit No.1/98 and RFA No.20/05 which was still pending.

8. That thereafter arguments from the parties was heard on 3/5/12. At the time of hearing the counsel for the Plaintiff had submitted that it was in fact the Plaintiff who had filed an appeal against the Judgment & Order dt.8/3/05 passed in Eviction Suit No.1/98 by the Sub-District Council Court, Aizawl. The appeal was registered as RFA No.20/05 by the District Council Court, Aizawl and it was allowed by the Judgment & Order dt.19/10/05 wherein the first Appellate Court while setting aside the Judgment & Order dt.8/3/05 had observed that the State Govt. was a necessary party and the Defendant No.5 herein may file a suit against the State Govt. and the Plaintiff herein in the proper forum, if so advise. The Defendant No.5 being aggrieved by the Judgment & Order dt.19/10/05 passed in RFA No.20/05 had preferred a second appeal to the High Court which was registered as RSA No.16/06. However the Defendant No.5 had withdrawn his second appeal by Order dt.9/3/11.

9. Issues No.1,2 & 3

These three issues are taken up together for convenience sake. The evidence on record proves that the LSC No.AZL 234/94 was issued in favour of the Defendant No.5 on 1/3/94 and the suit was filed on 1/7/05. This means that the suit was filed before the expiry of 12 years from the date of issue of LSC No.AZL 234/94. Article 65 of the Limitation Act, 1963 states that the period of limitation for filing of suit regarding possession of immovable properties or any interest therein based on title is 12 years from the time the possession of the Defendant becomes adverse to the Plaintiff. In the present case since the period of 12 years from the date of issuance of the LSC No.AZL 234/94 till the date of filing of the suit has not expired and since possession of the suit property is in the hands of the Plaintiff it is clear that the suit is not barred by limitation and estoppel. Further as the Judgment & Order dt.8/3/05 passed by the Sub-District Council Court, Aizawl in Eviction Suit No.1/98 was set aside by the District Council Court, Aizawl by its Judgment & Order dt.19/10/05 passed in RFA No.20/05 and since the second appeal filed by the Defendant No.5 before the High Court, which was registered as RSA No.16/06, was withdrawn by the Defendant No.5 by Order dt.9/3/11 it is amply clear that the present suit not barred by the principle of Res Judicata. Accordingly Issues No.1,2 & 3 are decided in favour of the Plaintiff.

10. Issue No.4

The next issue to be decided is whether House Pass No.25/96 was rightly issued to the Plaintiff for the suit land. The evidence adduced by the Plaintiff proves that he had constructed his dwelling house within the suit land in the year

1992 with the knowledge of Zuangtui Village Council and thereafter the Defendants No.1-4 after complying with all formalities required by law and with the approval of the Govt. given vide Order No.K.52012/192/95-REV dt.12/12/95 had issued House Pass No.25/96 in favour of the Plaintiff vide Memo No.R.14011/ZT/95-DC(A)/19 dt.2/2/96. In fact till date the Defendants No.1-4 had not passed any Order cancelling the House Pass No.25/96. On the other hand the Defendants No.1-4 as well as the Defendant No.5 had failed to adduce any evidence to prove that the House Pass No.25/96 issued in favour of the Plaintiff was done in violation of any prescribed procedure laid down for issuance of House Pass. Hence it is my irresistible conclusion that the House Pass No.25/96 was issued in favour of the Plaintiff in accordance with law. Accordingly Issue No.4 is decided in favour of the Plaintiff.

11. Issue No.5

This issue relates to whether LSC No.AZL 234/94 issued in favour of the Defendant No.5 was valid and legal. The Plaintiff in his evidence had proved the Office Memorandum No.LRR.207/88/56 dt.12/3/91 issued by the Defendant No.2 wherein the procedure to be followed in issuing Land Settlement Certificate is laid down. As per this Office Memorandum the Land Settlement Certificate could be issued only after obtaining administrative approval of the Govt. through the Defendant No.3. The Plaintiff further prove the Order Memo No.LRR/South-6/83/Pt/3(A) dt.4/9/87 issued by the Defendant No.2 which laid down that all VC Passes could not be demarcated or process for conversion into LSC without prior approval of the Govt. and all such cases had to be necessarily referred to the Govt. for final decisions. In the present case the LSC No.AZL 234/94 was issued by the Defendant No.4 without obtaining approval of the Defendants No.2 & 3. The LSC No.AZL 234/94 was converted from VC Pass but again no prior approval of the Govt. was obtained for converting the VC Pass into LSC. The Defendants were given amply opportunity to adduce evidence to prove that the LSC No.AZL 234/94 issued in favour of the Defendant No.5 was converted from V.C Pass into LSC with prior approval of the Govt, but the Defendants failed to adduce any evidence. Hence the only conclusion which can be drawn from the evidence on record is that the LSC No.AZL 234/94 was issued in favour of the Defendant No.5 by violating the procedure laid down by law and therefore it is held to be invalid and illegal. Issue No.5 is decided accordingly.

12. Issue No.6

Since the LSC No.AZL 234/94 has been decided to be invalid and illegal it is clear that the only conclusion left on the basis of the evidence on record is that House Pass No.25/96 was validly issued in accordance with law.

13. Issue No.7

The Judgment & Order dt.8/3/05 passed in Eviction Suit No.1/98 having been set aside by the first Appellate Court by its Judgment & Order dt.19/10/05 passed in RFA No.20/05 and the second appeal RSA No.16/06 filed by the Defendant No.5 having been withdrawn by the Order dt.9/3/11, the Defendant No.5 cannot rely on the Judgment & Order dt.8/3/05 anymore for claiming title over the suit land. Issue No.7 is decided in favour of the Plaintiff.

14. Issue No.8

This issue relates to whether the Plaintiff is entitled to the reliefs claimed. As all the issues have been decided in favour of the Plaintiff and since the Defendants failed to adduce evidence it can be safely held that there is no obstacle in granting the reliefs claimed by the Plaintiff. Accordingly this issue is decided in favour of the Plaintiff.

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

(1) The LSC No.AZL 234/94 issued by the Defendants No.1-4 in favour of the Defendant No.5 being converted from V.C Pass into LSC without prior approval of the Govt. in violation of the procedure laid down for issuance of LSC is declared null and void.

(2) The House Pass No.25/96 issued by the Defendants No.1-4 in favour of the Plaintiff being issued in accordance with law is declared to be valid and the Plaintiff is declared to be the legal owner of the land and building covered by House Pass No.25/96.

(3) The suit having been decree as above is disposed of accordingly.

Pronounce in the open court in the presence of the parties today the 24th day of May, 2012.

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

Memo No. _____ SCJ-2(A)/2012 : Dated Aizawl, the 24th May, 2012.

Copy to:

1. The District & Session Judge, Aizawl Judicial District, Aizawl for information.
2. Sh.Vanlalsiama, R/o Zuangtui, Aizawl.
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, Revenue Department, Aizawl through Asst. Govt. Advocate.
5. The Director, Land Revenue & Settlement Department, Govt. of Mizoram, Aizawl through Asst. Govt. Advocate.
6. The Asst. Settlement Officer-I, Land Revenue & Settlement Department, Govt. of Mizoram, Aizawl through Asst. Govt. Advocates
7. Sh.Vanthangpuia, S/o Lalkhuma, R/o Zarkawt, Upper Bazar, Aizawl.
8. Sh.C.Lalramzauva & Ors, Advocate.
9. Sh.R.K.Malsawmkima, Asst. Govt. Advocate.
10. Registry Section.
11. Case record.

Peshkar