

IN THE COURT OF THE SENIOR CIVIL JUDGE, AIZAWL DISTRICT, AIZAWL MIZORAM
Declaratory Suit No.9/2007

Hrangmana,
 S/o Lianbela,
 Dawrpui Vengthar, Aizawl

.....Plaintiff.

-Versus-

1. The State of Mizoram
 (Through the Chief Secretary to the Govt. of Mizoram)
2. The Commissioner/Secretary
 Govt. of Mizoram,
 Land Revenue & Settlement, Aizawl.
3. The Director,
 Land Revenue & Settlement
 Mizoram, Aizawl.
4. The Asst. Settlement Officer,
 Land Revenue & Settlement
 Mizoram, Aizawl.
5. Mr.Lalhunruata,
 Dawrpui Vengthar, Aizawl.
6. Mr.G.M.Ropianga,
 Dawrpui Vengthar, Aizawl.

.....Defendant.

BEFORE
R.VANLALENA, Senior Civil Judge-2

For the Plaintiff : Shri L.H.Lianhrima, Advocate.
 For the Defendants: Asst. Govt. Advocates.
 Date of Judgement: 11.5.2012.

JUDGEMENT AND ORDER

11.5.2012

The brief facts of the case leading to the filing of the instant suit as reflected in the plaint may be stated as belows:-

The plaintiff purchased a plot of land and building covered by LSC No.233 of 1947 with an area of 524.64 Sq.m which is taken as half bigha from Shri Vanlalliana S/o Taitea, Dawrpui Vengthar, Aizawl at a price of Rs.1,35,000/-(Rupees one lakh, thirty five thousand) only and Sale Deed for the same was also executed by the parties. The plaintiff with his family since then occupied the said land and the building on the land which was reconstructed in the year 2003.

However, the Defendants No.5&6 who are known to be political party workers of the ruling MNF party and by taking advantage of their status as such and by undue influence were illegally issued plot of lands vide LSC No.Az1.34 of 2001 and House Pass No.893 of 2003 from within the land covered by the plaintiff's LSC No.233 of 1974 and the area reserved for ravine in spite of the strong objection raised by the plaintiff : Consequent upon the objection raised, the Defendant No.3 – Director of Land Revenue & Settlement Department Aizawl made an order vide No.C.13016/W-8/03-DISP (Rev) dated 13.04.2006 by which the Asst. Director of Survey (T) Shri Rinzamlova was detailed to conduct spot verification in respect of the land of the defendant no,5&6. The said Survey Officer accordingly went to the spot and demarcated the areas of land in respect of the two defendants and made an agreement between themselves excluding the plaintiff. As the formal complaint dated 06.05.2006 made by the plaintiff to the concerned authority did not yield fruitful results, the plaintiff, having no other option, therefore submitted a written complaint to the Sr.Town & Country Planner, Local Administration Department, Government of Mizoram with a copy to the Director of Land Revenue & Settlement Department praying for stay of the proposed construction of building at the disputed site by defendant no,5&6. As a result of this, the stay order vide No.A.42011/11/02-TCP (AN/AE)Pt dated 29th August 2006 and No.A.42011/11/2002-TCP(AN/AE)Pts dated 16th February 2007 were issued to the said defendants to stall the ongoing construction of their buildings with a direction to obtain necessary permission from the office of the Senior Town & Country Planner as per law. However, the stay order aforementioned yielded no fruitful results the plaintiff submitted a reminder dated 13.03.2007 to the Senior Town & Country Planner, Aizawl for proper execution of the said stay order duly issued by the authority. In the meantime, the Extra Asst. Commissioner (J) DC office, Aizawl enquired from the Senior Town & Country Planner as to whether the permission was granted to the defendants no.5&6 for construction of their respective house buildings vide No.J.13013/12/2005-DC (A) dated 11th May 2007. In his reply to the said letter, the Sr. Town & Country Planner informed the EAC(J) that no such permission was granted to the defendants no 5&6 vide his letter No.A.42011/11/2002-TCP(AN/AE)pt-I dated 12th June 2007. At the same time, the Senior Town & Country Planner wrote to the Deputy Commissioner, Aizawl requesting him to remove unauthorized house-buildings of the defendants no.5&6 who constructed their respective house-buildings without obtaining a permission from competent-authority vide his letter No.A-42011/11/2002-TCP(AN/AE)Pt-I dated 14th May 2007. The Senior Town & Country Planner informed the Deputy Commissioner about the stay orders issued by him but which had not been complied with by the defendants no.5&6 rather continued the construction. However, in stead of demolishing the illegal construction, the Deputy Commissioner had referred the matter to the defendant no.3 i.e. Director of Land Revenue & Settlement, Aizawl as the matter pertained to the land dispute for further necessary action. Unfortunately, the said Defendant no.3 failed to take appropriate action against the defendants no.5&6 presumably due to the political influence of the said two defendants who are basically ruling MNF party workers.

Due to inaction of the concerned authorities on the matter, the Defendants no5&6 constructed their respective house-buildings beyond the area of land covered by their respective House Passes thereby encroached upon the land of the plaintiff and the land reserved for ravine.

The suit land is situated within Aizawl District and the cause of action arose between the parties who are residents of Aizawl District, this court has jurisdiction to try the suit and dispose of. The plaintiff deposited court fees of Rs.30/- as the suit is declaratory in nature. The suit is filed bona fide and for the ends of justice.

The plaintiff therefore, prays the following reliefs:-

- a) Let a Decree be passed in favour of the plaintiff declaring that the Defendants no 5&6 had encroached upon the land of the plaintiff covered by LSC No.233 of 1974.
- b) Let a Decree be passed declaring that the land Passes held by the Defendants no.5&6 in respect of the suit lands are illegal and are to be cancelled/declared null and void and the same may be cancelled/quashed.
- c) Let the cost of the suit be decreed in favour of the plaintiff against the Defendants no,5&6.
- d) Let any other relief to which the plaintiff is entitled according to Justice, Equity and Good conscience be decreed in favour of the plaintiff.

On the other hand, the Defendants No.5&6 contested the instant suit by filing their respective written statements on 19.02.2009 while the Defendants No.1-4 i.e. State of Mizoram through the Chief Secretary and 3 others failed to file their written statements thereby becoming the instant case proceeded ex-parte of the said Defendants no.1-4.

In their written statements, the Defendants no.5&6 contested that the suit is not maintainable in its present form and style and this court has no jurisdiction to try this suit. There is no cause of action in favour of the plaintiff and the plaint is liable to be rejected outright on the ground that it is not supported by an affidavit. The suit has not been properly verified. The Defendants No.5&6 submitted that the alleged INHMUN INLEINA LEHKHA is invalid in the eye of law. The Defendants no.5&6 denied the allegation of the plaintiff that the land allotted to them were not vacant and are reserved for ravine area. It is also submitted that the plaintiff has not been included in the agreement dated 05.04.2006 as he was not a necessary party in as much as his land has not been affected by the agreement. The Defendants no.5&6 stated that they were not aware of the alleged complaint dated 16.08.2006 and 16.02.2007. The dispute of the plaintiff had been replied by the Revenue Authorities, however the plaintiff on being dissatisfied approached the Sr.Town & Country Planner, Aizawl in stead of preferring an appeal to the higher authority competent to deal with the matter and submitted that the matter of dispute is not within the land covered by LSC No.233 of 1974 owned by the plaintiff. The Defendants no 5&6 added that they constructed their

respective house building within LSC No.103502/01/434 of 2001 and LSC No.103502/01/990 of 2006 issued to them by the competent authority after proper verification and demarcation. The plaintiff himself admitted in ANNEXURE –IV of his plaint that the lands allotted to the defendants no.5&6 are not within his land. The Defendants further stated that the lands allotted to them are not within the area reserved for ravine areas. The instant suit is purely an unnecessary harassment to them and thus the plaintiff is not entitled to the reliefs claimed on the above-mentioned facts and circumstances of the case.

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 defendants no.5&6 have encroached upon the land of the plaintiff ?
- 3) Whether the plaintiff is entitled to the relief claimed ? If so to what extent and from whom ?

The plaintiff examined two witnesses including himself as plaintiff witnesses while the Defendants no.5&6 examined none except the filing of their written statement. The Defendants no.1-4 being ex-parte proceeded against them.

Issue No.1 :

Whether the suit is maintainable in its present form and style ? In respect of issue No.1, regarding the maintainability of the suit, the matter had been heard at a preliminary hearing stage on dt.19.06.2009. The issue was heard in presence of counsels for both parties. The court decided the suit to be maintained and hence issue no.1 need not be discussed at this stage as it had been decided in favour of the plaintiff.

Issue No.2:

Whether the Defendants no.5&6 encroached upon the land of the plaintiff ? The plaintiff in his deposition before the court stated that the Defendants no.5&6 had constructed their house buildings beyond the area of land covered by their respective House Passes and therefore encroached upon the land of the plaintiff. The said defendants no.5&6 were issued Land Passes by the concerned authority within the land area of LSC No.233 of 1974 of the plaintiff and the area reserved for ravine on their being influential MNF party workers of the ruling MNF party at the relevant time. Due to encroachment upon his land, the plaintiff submitted a formal complaint to the concerned Revenue authority but was turned down by the latter. The plaintiff therefore, submitted another complaint to the Sr.Town & Country Planner with a copy of the same given to the Director Land Revenue & Settlement Department for stay of the proposed construction of building at the disputed site by the defendants no.5&6. Accordingly, the Sr.Town & Country Planner issued a stay order to stall their on-going building construction to the said defendants. As the said stay order bore no fruitful results, the

plaintiff again submitted a reminder dated 13.03.2007 for proper execution of the first stay order duly issued. Doing his level best, the Sr.Town & Country Planner requested the Deputy Commissioner, Aizawl to demolish the unauthorized buildings of defendants no.5&6, however, the matter was referred to the Director, Land Revenue & Settlement Department for necessary action citing the matter was pertaining to land dispute vide letter No.J.13013/12/2005-DC9A)/32 dated 28th May,2007. As the authorities concerned did not take any stringent action against the two defendants the plaintiff has no other option but to take step for legal actions.

Pw 2 namely Shri Vanlalthana deposed that he had sold the land covered by LSC No.233 of 1974 having an area of 524.64 Sg.m to the present plaintiff at a price of Rs.1,35,000/- for which Sale Deed was properly executed. He added that at the time when he sold the said LSC to the plaintiff, the two defendants no.5&6 did not possess any land Pass in the suit land and the LSC No.233 of 1974 now belonged to the plaintiff is much senior in time to the land passes held by the two defendants.

On careful examination of the depositions of the Pw 1, it is proved that the plaintiff enjoyed peaceful possession and occupation on the said suit land after he purchased the land from Pw 2 and prior to issuance of land passes to the two defendants by the defendants no.3. It is also found that soon after the two defendants no.5&6 obtained land Passes, the plaintiff suffered encroachment upon his land by the defendants no.5&6. The plaintiff exhausted all his efforts to eject the two defendants from his land by approaching authorities under the Government but all in vain. On careful perusal of the depositions of the Pws, this court has held that the land covered by LSC No.233 of 1974 has been encroached upon by the defendants no.5&6. Hence, issue no.2 is decided in favour of the plaintiff.

Issue No.3:

Whether the plaintiff is entitled to the relief claimed ? If so to what extent ? As the foregoing issues have been decided in favour of the plaintiff; this issue does not seem to pose any obstacle in view of the fact that all other issues have been decided in favour of the plaintiff. The plaintiff in his suit prayed the following reliefs :-

- a) For a decree in his favour declaring that the defendants no.5&6 had encroached upon his land covered by LSC No.233 of 1974.
- b) For a decree declaring that the Land passes held by the defendants no.5&6 in respect of the suit land are illegal and may be declared null and void.
- c) Costs of the suit may be declared in favour of the plaintiff and against the said defendants.
- d) Any other reliefs to which the plaintiff is entitled accordingly to Justice, Equity and Good conscience.

Even though the suit has been contested by the defendants no.5&6 by filing their written statements, no evidence whatsoever has been adduced by them and the only available evidence on record is the evidence of the plaintiff and his witness. In spite of

this, it cannot be held that the Defendants no.5&6 have nothing to say against the reliefs sought for by the plaintiff in this suit. However, the relief granted to the plaintiff is confined only to those mentioned at serial no. (a) & (b) above. This court is of the view that parties should bear their own costs. Thus issue no. 3 is decided in favour of the plaintiff as stated hereinabove. Thus this suit is finally decided and decreed as follow:-

- a) It is declared that the plaintiff's land covered by his LSC No.233 of 1974 had been encroached upon by the Defendants no.5&6.
- b) The land Pass held by the Defendants no.5&6 in respect of the suit land are declared null and void to the extent they had overlapped and encroached upon the land of the plaintiff.

With this decree, the instant suit is hereby disposed of.

Pronounced in upon court in presence of parties on this 11th May,2012.

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

Memo No.416 /SCJ-I I(A)/2012: Dated Aizawl the, 21st May, 2012.

Copy to:

1. The District and Sessions Judge, Aizawl District, Aizawl, Mizoram for information.
2. Hrangmana, S/o Lianbela, Dawrpui Vengthar, Aizawl through counsel Shri L.H.Lianhrima.
3. The State of Mizoram (Through the Chief Secretary to the Govt. of Mizoram) through Asst. Govt. Advocates.
4. The Commissioner/Secretary, Govt. of Mizoram, Land Revenue & Settlement, Aizawl through Asst. Govt. Advocates
5. The Director, Land Revenue & Settlement, Mizoram, Aizawl through Asst. Govt. Advocates
6. The Asst. Settlement Officer, Land Revenue & Settlement, Mizoram, Aizawl through Asst. Govt. Advocates
7. Mr.Lalhunruata, Dawrpui Vengthar, Aizawl.
8. Mr.G.M.Ropianga, Dawrpui Vengthar, Aizawl.
9. Registry Section.
10. Case record.

PESHKAR

