

**IN THE COURT OF SHRI VANLALMAWIA ADDL. DISTRICT JUDGE –I
AIZAWL JUDICIAL DISTRICT, AIZAWL.**

F.A.O. 1/2011
A/o Civil Suit No.18/2008.

1. The Secy to the Govt. of Mizoram,
General Administration Department
Mizoram, Aizawl.
2. The Secy to the Govt. of Mizoram
Rural Development Department
Mizoram, Aizawl.
3. The Block Development Officer,
Khawbung, Mizoram.
4. The Deputy Commissioner,
Aizawl District, Aizawl.
5. The Deputy Commissioner,
Champhai District, Champhai. : Appellants.

Versus

C. Sangzuala
S/o Lianchama(L)
Republic Vety Mual. : Respondent.

BEFORE
Vanlalmawia
Addl.District Judge-I
PRESENT

For the Petitioner	:	Joseph Lalfakawma, G.A.
For the Respondent	:	A. Rinliana Malhotra, Advocate.
Date of Hearing	:	6.03.2017.
Date of Judgement	:	20.03.2017.

ORDER

This F.A.O. 1/2011 is returned back by Hon'ble Gauhati High Court, Aizawl Bench in RSA No.8/2015 directing this Court for re-determine of the issue involved in both FAO as well as Cross Objection a fresh, by setting aside and quashing this Court Judgement and Order dt. 26.9.2013 and dt. 7.10.2013. The Judgement Order of Senior Civil Judge, Aizawl dt. 18.11.2010 in Civil Suit No.18/2008 was challenged and appealed in this Court, and this Court has disposed the appeal on 26.9.2013, and second appeal was heard and disposed by the Hon'ble High Court on 24.2.2016, and hence returned back to this first appealed Court to re-determine a fresh.

Fact of the case, in the Senior Civil Judge Court is that :

2. The plaintiff's case in brief is that his late father was given of plot of land by the erstwhile Chief of Khawbung in which his late father had constructed a residential house and planted crops, vegetables and fruits. During the year 1968-69, while his father was in legal possession of the said plot of land, the Government of Mizoram had constructed buildings and residential quarters for the Administrative Officer and Staff. He was not informed of the proposal by the Government of Mizoram and his objections were also ignored and he was not given any opportunity to collect and reap the fruits and crops he had planted as all the fruits, crops and vegetables were destroyed due to the illegal occupation by the Govt. of Mizoram. Being aggrieved, he had filed Money Suit no. 5 of 1986 for payment of adequate compensation for the acquisition of his land by the Govt. of Mizoram and also for the damage crops, vegetable and fruits. The said suit was decreed in his favour by the trial Court by its Judgment and Order dated 10.09.90 wherein the Defendants No. 2 and 5 were directed to pay adequate compensation to him for the suit land in accordance with law and to further pay the compensation to him for the suit land in accordance with law and to further pay the compensation amounting to Rs. 68,085/- plus pedentilite interest @ 12% per annum for the fruits and crops destroyed by them.

3. Thereafter, due to the in action on the part of the defendants No.2 & 5, he had filed an Execution Case No.1 of 1997. During the pendency of the Execution petition, the Hon'ble court by order dated 10.3.1998 had directed the Addl. B.D.O. , Khawbung to ascertain the exact area of the land belonging to him belonging to the defendant No. 2 & 5, who in turn had informed the Hon'ble Court that the total area occupied by the defendant No. 2 & 5 was 2570 sq. mts. On the basis of the report submitted by the Addl. B.D.O. Khawbung, the defendant No.5 had assessed the rental compensation payable to him for the use and occupation of his land for the period from 1.10.68 to 30.6.98 amounting to Rs. 2,09,572 /- subsequently, the Hon'ble court had disposed of the Execution Case No. 1/1997 by it Order dt.11/9/98 wherein the Defendants No.2 & 5 were directed to deposit the decretal amount of Rs.68,085/- in respect of the damaged crop with interest @ 12.5% p.a. with effect from 1/10/68 till date plus Rs.2,09,572/- on account of rental compensation for occupation of his land as calculated by the Defendants No.5 within a period of two months from 11/9/98 failing which another interest @ 6% p.a. was to be paid. Thereafter, the Defendants had paid the compensation amounting to Rs. 5,31,583/- to him, but however, no rental compensation for the period after 31/6/98 has been paid to him although his land covering an area of 2570 sq.m. located at Khawbung is still under the active occupation of the Defendants. Being aggrieved by the non payment of rental compensation for the period from 1/7/98 till date he had submitted a representation to the Defendant No.2 for payment of rent for the period from 1/7/98 onwards and for payment of compensation for the cost of his land. Having no positive response from the Defendants, he had filed a Writ Petition i.e. W.P (C) No.46/07. In the said writ petition the defendant No.2 had filed an Affidavit-In-Opposition wherein it had taken the stand that his land has been vacated in the year 2003. The said writ petition was disposed of by the Order dt.6/12/07 wherein the Hon'ble High Court (Aizawl Bench), while holding that the claim made by the respective parties in the petition being complicated and disputed question of fact cannot be decided in a writ proceeding, was pleased to direct him to approach the appropriate forum in the civil side for claiming to which he is entitled. Thereafter, he served a Notice dt. 6/2/08 U/s 80

CPC upon the defendants for payment of rental compensation for the use and occupation of his land.

4. Belatedly, after he had served a Notice U/s 80 CPC, the Defendant No.2 had issued the Order Memo No. C.18022/1/98-GAD dt. 23/11/07 whereby his land at Khawbung which was occupied by the Defendants for A.O's Complex was vacated w.e.f. November 2007. Due to the inaction on the part of the Defendants for payment of the use and occupation of his land he filed this Suit claiming the following reliefs:-

- i) For a decree in favour of the Plaintiff and against the Defendants.
- ii) For a decree declaring that the Defendants were in illegal occupation of the Plaintiff's land measuring 27653.20 sq.ft at Khawbung w.e.f. 1/7/98 till November 2007.
- iii) For a decree declaring that the plaintiff is entitle to payment of rental compensation for the used and occupation of his plot of land measuring 27653.20 sq.ft at Khawbung by the Defendants w.e.f. 1/7/98 till November 2007 as may be assessed by the Defendants No.5 & 6 along with interest @ 12% p.a. till realization and
- iv) For any other relief(s) as this Court may deem fit and proper.

5. The suit was contested by the Defendants by filing a written statement wherein they had claimed that the suit was barred by limitation, estoppel, waiver and acquiescence and that the suit is bad for misjoinder/non-joinder of necessary party, and that there was no cause of action in favour of the Plaintiff and against the Defendants and that the Plaintiff has no locus standi to file the present suit. The rental compensation amounting to Rs. 5,31,583/- was paid to the Plaintiff by the Defendant No.5 for the period of their occupation i.e. 01/10/1968 to 31/06/1999, further the said land of the Plaintiff which was occupied by the General Administrative Department, Mizoram was vacated by the AO's and staff since 2003, and as such the Defendant No.1,2,5 & 6 have no liability since it was handed over to the Addl. BDO under the direct administrative control of the Rural Development Department in the year 2003. Thereafter the Defendants had

submitted an additional Written Statement by way of which they had submitted two additional documents.

6. That thereafter on the basis of the pleadings of the parties the following issues were framed :-

- v) Whether the suit is maintainable in its present form and style.
- vi) Whether there is any cause of action in favour of the Plaintiff and against the Defendants.
- vii) Whether the suit is barred by limitation, estoppel, waiver and acquiescence.
- viii) Whether the Plaintiff's land at Khawbung was occupied for AO's Complex and whether it was vacated by the Defendants with effect from November, 2007.
- ix) Whether the Plaintiff is entitled to the reliefs claimed, if so, to what extent?

7. The Senior Civil Judge, Aizawl has decided that the Defendant No.2 is held liable to pay rental compensation to the Plaintiff for the use and occupation of his suit land at Khawbung measuring 27653.20 sq.ft. w.e.f. 1/7/98 to November, 2007 which may be assessed by the Defendant No.6 in accordance with the relevant provision of law plus interest @ 12% p.a. till realization. The Defendant No.6 is hereby directed to assess the rental compensation payable to the Plaintiff within a period of two (2) months from the date of this order and thereafter the Defendant No.2 is directed to make payment of the rental compensation as assessed by the Defendant No.6 within a further period of two (2) months thereafter.

The suit is accordingly disposed of Parties shall bear their own cost.

8. Being aggrieved in the Judgement of Lower Court, the appellant, Govt. of Mizoram (Defendant No.2) has preferred an appeal to this Court stating many things amongst others that the observations and findings of the trial Court are beyond reasons and appreciation.

- (1) That in the plaint and during the trial the above respondent has fails to prove that the land belongs to him;
- (2) That Respondent had not produce any permit or pass during the entire trial;
- (3) That the appellant had contested the suit in the lower court by filing written statement and evidences showing the Respondent has no locus standi and is not entitled to his vague claims;
- (4) That the trial Court erred in deciding issues No. 1,2, & 3 in favor of the respondent as the Respondent have paid court fees Rs.30 as his claims are only declaratory in nature. And in declaratory nature it is his burden to prove that the title of the suit is in his favor. However, the Respondent absolutely fails to prove and does not adduce any evidence to support his title except which the past mistake done by the Appellant. Therefore the impugned order is need to be set aside.
- (5) That the Appellant has illegally and wrongly suffered due to the unnoticed of the facts of the case and has already paid to the respondent amounting to Rs. 5,31,583/-. And even after the discovery of the facts if the appellant are to more suffer by suffocating of facts it will be repeated of injustice and thus this interference of Appellate Court is call for.
- (6) That this is a fit case for the Hon'ble court to admit this appeal, interfere and set aside the said impugned order and pass an order in favour of the appellant for the end of justice.
- (7) That regarding to pecuniary jurisdiction the value of the suit is estimated to be about Rs.31,249/- (Assessment made by Dist. Collector Champhai is marked as Annexure – III and annexed herewith).

9. It is, therefore, humbly prayed that this Hon'ble Court may be pleased to admit this memorandum of appeal, calls the original case record, after hearing both sides, set aside the said impugned order dated 18th Nov, 2010 passed by Sr. Civil Judge in connection with C.S. No. 18/08 for the end of justice or pass any order(s) which deems fit and proper for the end and interest of justice.

And pending disposal of the appeal it is also prayed to stay the operation of the said impugned order dated 18th Nov. 2010 passed by Sr. Civil Judge in connection with C.S. No. 18/08.

10. In the meantime, the Respondent C. Sangzuala submitted Cross Objection through his Id. Counsel stating that the suit was contested by the Appellants/Defendants and after taking evidence the trial court had decreed the suit by Judgment & Order dt.18/11/10 wherein the trial court was pleased to direct the Appellant No.5/Defendant No.6 to assess the rental compensation payable to the Respondent for the use and occupation of his land measuring 27653.20 sq.ft located at Khawbung for the period from 1/7/98 till November 2007, within a period of two months and to also direct the Appellant No.1/Defendant No.2 to make payment of the rental compensation so assessed within a period of two months thereafter.

11. That thereafter the Appellant No.5/Defendant No.6 had in pursuance of the Judgment & Order dt.18/11/10 passed in Civil Suit No.18/08 assessed the rental compensation for the period from 1/7/98 to November 2007 and vide letter Memo No.L.20012/1/98- DC(C) dt.17/1/11 addressed to the Appellant No.1 and the Respondent informed them that the total rent for the period from 1/7/98 to November 2007 was Rs.31,249/- which was to be paid by the Appellants.

12. That in this regard it is submitted that the Appellant No.5/Defendant No.6 had assessed the monthly rent with effect from 1/7/98 onwards by applying the formula given in the Mizoram Urban Areas Rent Control Act, 1974 by treating the case of the Respondent as a fresh case. However, the Appellant No.5/Defendant

No.6 have failed to realize that the Appellant No.4/Defendant No.5 had already assessed the monthly rent payable to the Respondent for the period from 1/10/68 to 31/6/98 vide letter No.F.15012/1/97- DC(A) dt.22/1/99 according to which the monthly rent payable to the Respondent was already Rs.1404/- as on 31/6/98 for the suit land. Hence the Appellant No.5/Defendant No.6 could not have assessed the monthly rent to be Rs.276.532p only.

13. That it is the duty of the Appellant No.5/Defendant No.6 to have assessed the monthly rent for the period from 1/7/98 to November 2007 by taking the monthly rent as on 1/7/98 to be Rs.1404/- as already previously assessed by the Appellant No.4/Defendant No.5.

14. In the premises it is most humbly prayed that the Hon'ble Court may be pleased to direct the Appellant No.5/Defendant No.6 to reassess the monthly rent for the period from 1/7/98 to November 2007 by taking the monthly rent for the suit land to be Rs.1404/-as already assessed by the Appellant No.4/Defendant No.5 vide his letter No.F.15012/1/97-DC(A) dt.22/1/99 and to pass any other Order(s) as the Hon'ble Court may deem fit and proper.

15. Both parties are heard at length, upon hearing of both parties and on perusal of the material evidence available on record, it is learnt that appellant (Defendant No.5) had paid Rs.5,31,583/- as rental compensation to the Respondent for a period of 366 months for a period of their occupation i.e. 01/10/1968 to 31/06/1999 which can be calculated $(531583 \div 366)$ @ Rs. 1452/- p.m. This means that the appellant has admitted the claims of Respondent that his land was occupied by appellant, which is against his statement on his ground of appeal in Sl.No. 4(c) & (d).

16. The appellant has to challenge the ownership of the occupied land and production of permit/pass in the Lower Court. But the appellant show his acceptance of ownership of occupied land of respondent by paying rental compensation amounting to Rs.5,31,583/- for a period of 30 years and 6 months. Had the appellant challenged the ownership of occupied land for AO Quarters,

belongs to the respondent, he would not paid the rental compensation to the Respondent, instead he will challenged to the higher Court. So, the man bone of contention seem to be the next period effective from 1/7/99 to November 2007, and not 1/7/98, as appeal had paid up to 31/6/99.

17. The appellant has vacated the occupied area in the month of November, 2007 vide their letter No.C.18022/1/GAD dt.22.9.2009. So, the remaining period of occupation which was not paid compensation is 101 months effective from July, 1999 to November, 2007 which is 8 years and 5 months.

18. The Respondent C. Sangzuala in his Cross-Objection petition stated that appellant No.5/ Defendant No.6 had assessed the monthly rent with effect from 1/7/98 onward by applying formula given in the Mizoram Urban Areas Rent Control Act 1974 by treating the case of the respondent as a fresh case. The appellant No.5/Defendant No.6 has failed to realize that appellant No.4/Defendant No.5 had already assessed the monthly rent payable to the respondent for the period from 1/10/68 to 31/6/98 vide letter No.F.15012/1/97 – DC(A) dt.22/1/99 according to which the monthly rent payable to the Respondent was already Rs. 1404/- as on 31/6/68 for the suit land. Hence appellant No.5/ Defendant No.6 could not assessed the monthly rent to be Rs.276.532p only, and prayed to direct the appellant No.5/Defendant No.6 to re-assessed the monthly rent for the period from 1/7/98 to November, 2007 by taking the monthly rent for the suit land to be Rs.1404/- as already assessed by appellant No.4/Defendant No.5, vide his letter No.F.15012/1/97 dt.22/1/99 and to pass any order in favour of respondent.

19. It is evidence that the appellant had paid Rs.5,31,583/- as rental compensation for the period 1/10/1968 to 31/6/1999, without applying Mizoram Urban Areas Rent Control Act 1974, and what proforma was used is not mentioned for paying the said period of rental compensation. The appellant has to show supporting document if Khawbung village area is included as Urban area, for calculation of rent for the remaining period of July, 1998 to November, 2007. So, the appellant has to apply the same formula/Act for the same

area/location for realization of rental compensation, and if different formula has to apply, they have to clarify as to why same formula is not applied for the remaining period.

20. In the meantime, the Respondent claims Rs.1404/- p.m. for realization of rental compensation for the remaining period as already assessed by the appellant, for paying for the period 1/10/68 to 31/6/98. The calculation of monthly rental compensation may be different i.e. $\text{Rs.}5,31,583 \div 366 \text{ month} = \text{Rs. } 1452/-$, but the respondent claims Rs. 1404/- p.m. which seem to be less than the appellant assessment in his Cross-Objection petition.

21. In view of the previous assessment of rental compensation which was already paid by appellant to the respondent, I find no reasonable ground to reject the claim of Respondent @ Rs.1404/- p.m. for the remaining period as it seem to be less than the previous assessment of appellant, and find it just and proper.

22. It is therefore ordered that Appellant, Govt. of Mizoram through appellant No.5 (D.C. Champhai) has to pay the remaining period from 1/7/98 to November, 2007 of rental compensation for occupation of suit land AO Quarter/Complex at Khawbung, Champhai District at a monthly rent of Rs.1404/- p.m. within two months from the date of Judgement.

If the rental compensation is paid within two months, there will be no interest, and if not paid within the stipulated time, there will be interest @ Rs.12% per annum till realization of the case.

Appeal is disposed, with the Cross-Objection by the Respondent.

Announce in open Court today i.e. 20th day of March, 2017.

Sd-VANLALMAWIA
Addl. District Judge-I
Aizawl Judicial District, Aizawl.

Memo No ____ /ADJ-I(A)/2017 : Dated Aizawl, the 20th March, 2017.

Copy to:

1. District Judge, Aizawl Judicial District, Aizawl.
2. Secretary GAD, Govt. of Mizoram, Aizawl.
3. Secretary, Rural Development Department, Govt. of Mizoram.
4. Block Development Officer, Khawbung.
5. Deputy Commissioner, Aizawl District, Aizawl.
6. Deputy Commissioner, Champhai District, Champhai.
7. C. Sangzuala S/o Lianchama(L), Republic Vety Mual through Counsel
A. Rinliana Malhotra.
8. G.A.
9. Judicial Section.
10. Case record.
11. Guard file.

PESHKAR