

IN THE COURT OF SENIOR CIVIL JUDGE- 2 AIZAWL DISTRICT: AIZAWL

Civil Misc Application No. 49 of 2011

[Arising out of Declaratory Suit No. 07 of 2011]

Petitioner:

Smt. Thanzami Tochhawng
W/o Mr. Zatlai
Venghlui- Aizawl

Versus

Respondents:

1. Mr. Lalzamlia Sailo
S/o Saikhuma Sailo
Melthum- Aizawl
2. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
Mizoram- Aizawl
4. The Assistant Settlement Officer- 1
Aizawl District: Aizawl
5. The Aizawl Development Authority
New Secretariat Complex, Khatla
Aizawl- Mizoram
6. The Town Planner Member
Aizawl Development Authority
New Secretariat Complex, Khatla
Aizawl- Mizoram

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 2

For the Petitioner	: 1. Mr. W. Sam Joseph Adv. 2. Mr. Hranghmingthanga Ralte, Adv. 3. Mr. F. Lalengliana, Adv. 4. Mr. Francis Vanlalzuala, Adv. 5. Mr. C. Lalfakzuala, Adv.
For the respondent no. 1	: 1.Mr. C. Lalramzauva, Sr. Adv. 2. Mr. T.J. Lalnuntluanga, Adv. 3. Mr. K. Laldinliana, Adv. 4. Mr. James Thanghmingmawia, Adv.
For the respondents 2-6	:
Date of hearing	: 19-04-2011
Date of Order	: 25-04-2011

ORDER

SUBMISSIONS

This is a Civil Misc application filed by Smt. Thanzami Tochhawng against the respondent No. 1 Mr. Lalzamlia Sailo not to continue excavation of the land and construction of building within the elaka of LSC No. 104001/01/149 of 2006 or do anything adverse to the interest of the plaintiffs/applicants during pendency of the suit and also further prayed ad interim order restraining the defendant No.1/respondent No. 1 from continuing excavation of the land and construction of building within the elaka of LSC No. 104001/01/149 of 2006 or do anything adverse to the interest of the plaintiffs/applicants during pendency of the instant application.

In the written objection of the respondent no. 1, he contended that the petitioner without clean hands approached the court for temporary injunction is liable to reject at the threshold. In regards to prima facie case, LSC No. 104001/01/149 of 2006 was duly and legally issued in favour of the respondent no. 1 and no interference of the court is required. The Aizawl Development Authority issued permission for the instant construction under No. D. 33011/24/2009- ADA (TPW)/Pt.- 1/4 Dt. 6/10/09 and thereby not usurp the said permissible construction by the respondent no. 1. Moreover, by invoking Regulation No. 45 of the ADA Building Regulations, 2008, the Relaxation Committee recommended the instant construction, the Structural Engineer namely- Mr. Hrangthanga Zote also opined that "... there will be no risk to the safety of Pi Lalthanzami building" sent to the Executive Engineer, Aizawl Development Authority on Dt. 25/11/2010. Thus, it is not necessary to grant temporary injunction as prayed by the petitioner.

POINTS OF RIVALRY

At the time of hearing of the petition, Mr. W. Sam Joseph, Ld. Counsel for the petitioner submitted that the Aizawl Development Authority inflicted biasness in their own decisions by considering the instant construction which they never allowed to others as it is inimical to existing Regulations. More so, although the impugned LSC No. 104001/01/149 of 2006 requires prior approval of the Government for its issuance as clearly embodied under Rule 9 of the Mizo District (Land & Revenue) Rules, 1967. Certainly, digging of the foundation of the construction of the respondent no. 1 is endangering for the safety of the building of the petitioner adjacent to the same. Further, without such injunction, continuity of the said construction will leads a futile court proceedings and will irreparably loss for the petitioner. Thus, the ingredients, prima facie case, balance of convenience and irreparable injury is proof by the petitioner.

Mr. C. Lalramzauva, Ld. Sr. Advocate by reiterating their written objections contended that the work for digging/excavating the earth for foundation is already completed by the respondent no. 1, it is therefore no need of passing temporary injunction. The cements and other materials already collected by the respondent no. 1 for the said construction also likely damage without resuming the work. Various drawings as proposed Commercial building at Dawrpui, Aizawl pertaining to the suit land also advocate the ongoing work of the respondent no. 1 and were within the permission granted by the Aizawl Development Authority as per the findings of Structural Engineer which cogently found that the instant construction is

not havoc to the petitioner at all. Thus, grave to reject the injunction petition as no grounds.

DISCUSSIONS AND LEGAL PRINCIPLES INVOLVED

Facts submitted in the plaint is that the LSC No. 104001/01/149 of 2006 belonging to the defendant/respondent No. 1 should declare as null and void and illegally and improperly issued and to declare the permission for construction of building within the suit land issued by the Aizawl Development Authority as null and void and arbitrary in nature which cause hazardous to the plaintiff.

As desired, visiting of the spot by the Presiding Officer was performed on 22-04-2011 at 3:00 P.M at Dawrpui, it is much helpful for making decisions. Pertinently, the respondent no. 1 called upon his relatives may be some retired officials and they almost committed intrusion in the proceedings by making strong comments, suggestions above the Presiding Officer. If I am in a position to make comments on it, such undue interference in the court proceedings is inimical to ethics, principles of law and lastly justice. As and when necessary, they can be called as 'Witnesses'. For making submissions before the Presiding Officer, they engaged with a very very learned Advocates, it is enough for them. Interference of middlemen in a judiciary is never welcome and never experienced whilst the cardinal legal connotation viz. '*Justice should not only be done but also seen to be done*' remains recognized by a series of their judgment of Hon'ble Writ Courts latest observed by their Lordship of Hon'ble Supreme Court in the case of **Narmada Bai vs State Of Gujarat & Ors.** decided on 8 April, 2011 in connection with W P (Criminal) NO. 115 of 2007 and also '*Right to fair hearing is a guaranteed right*' still recent case of Hon'ble Supreme Court in the case of **Kanwar Natwar Singh vs Directorate Of Enforcement & Anr.** decided on 5 October, 2010 in connection with Civil Appeal No. 8601 of 2010. Tampering and its inclination is therefore a *sine quo non* to avoid.

However, I must look into the legality of temporary/interim injunction by taking resorts in **Midnapore Peoples' Co-op. Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors.** in connection with Appeal (civil) 1727 of 2002 decided on 25/05/2006 reported in 2006 AIR 2190, 2006 (2) Suppl. SCR 986, 2006 (5) SCC 399, 2006 (6) SCALE 308, 2006 (11) JT 203, the Supreme Court has held that-

"16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties."

Also vide, **Premji Ratansey Vs. Union of India** decided on 22/07/1994 reported in 1994 (2) Suppl. SCR 117, 1994 (5) SCC 547, 1994 (3) SCALE 562, 1994 (6) JT 585: **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.** decided on 18/08/1999 reported in 1999 AIR 3105, 1999 (1) Suppl. SCR 560, 1999 (7) SCC 1, 1999 (5) SCALE 95, 1999 (6) JT 89: **Hindustan Petroleum Corporation Ltd. Vs. Sri. Sriman Narayan & Anr.** in connection with Appeal (civil) 3661-62 of 2002 decided on

09/07/2002 reported in 2002 AIR 2598, 2002 (5) SCC 760, 2002 (5) SCALE 132, 2002 (5) JT 335.

And in **Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Ors.** decided on September 11, 2009 and reported in (2009) 10 SCC 388, the Apex Court further held that-

“25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

....32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case.”

FINDINGS

Upon hearing of both parties and on perusal of case records and findings on visiting of the spot, the following findings on the basis of the aforementioned well settled ingredients/legal principles emerged as -

Prima facie case

The petitioner as a plaintiff in the main suit does not only challenged the construction work or the performance of the respondent no. 1, but also challenged the order arrived by the Aizawl Development Authority for granting permission for such constructions allegedly as unusual. As admitted by Ld. Sr. Advocates of the respondent no. 1 during hearing of the petition, the issuance of LSC No. 104001/01/149 of 2006 in favour of the respondent no. 1 remains vague and challengeable. Thus, I find prima facie case in favour of the petitioner

Balance of convenience

Although pledged by the respondent no. 1 that no deeper excavating earth spoils is necessary and stopped the said excavating work, free flow resumption of the work and might be completed very soon will prejudice the proceedings of the main suit as contended by Mr. W. Sam Joseph, otherwise, the suit will be purposeless and meaningless and it will create a futile exercise of the proceedings whether in favour of the petitioner or the respondent no. 1.

Howsoever, I acknowledge that paucity of the construction work will be a great loss for the respondent no. 1 as it requires a suitable season like the current season and while collecting all the necessary materials for the same. In short, it is not the fault of the respondent no. 1 which creates the instant case but the decisions or action of the Land Revenue and Settlement Department, Govt. of Mizoram for issuance of the impugned LSC and Aizawl Development Authority for granting permission for the disputed construction which is challenged and main crux in the instant case.

Irreparable injury

Though recognizing the convenience of the respondent no. 1, as the very purpose of temporary injunction is to proceed the case wholesomely and whilst remedy lies as costs of the suit or compensation if they succeed the case, this court is inevitable to concentrate into the smooth and effective proceedings of the case.

In regards to the petitioner as the plaintiff in the main suit, I find that failure to grant temporary injunction as applied will leads miscellany of the case and circumlocution or trammeling of the proceedings in the main suit.

ORDER

So is the factual matrix and legal principles, without taking prudence for interim measures during pendency of the main case, the main suit will be futile and incapable to adjudicate whether in favour of the plaintiffs or not but except to delay for few times, no loss will be caused to the respondent No. 1 or other parties as already highlighted.

By recognizing the hindrances which may cause by this injunction, it is the pleasure and willingness of this court for speedy trial and disposal if parties positively and constructively cooperate the proceedings.

Thus, the defendant/respondent No. 1 is directed not to continue his building construction and excavation of soil within the area covered under LSC No. 104001/01/149 of 2006 unless and until disposal of Declaratory Suit No. 7 of 2011 meant to avoid irreparable loss, upholding balance of convenience while a prima facie case is found existed on perusal of the application and the contents of the main plaint even towards discolouring of the main suit. By holding the sanctity of courts, the Station House Officer, Aizawl Police Station House is again kindly directed to vigil on the compliance of this temporary injunction and to bring the culprit if found into justice.

Before parting with the application, needless to say but relevant in the discourse is that in some cases like in the instant application, the cause of action arose on the decision/action of the state government but not directly affected the state government again and victimized the private parties, unfortunately, the state government betrayed of the proceedings to uphold their decisions which is against the principles laid by the Mizoram State Litigation Policy, 2010. The State defendants in the main suit are expected not to betray or not to commit negligence on the civil proceedings so as to arrive correct decisions for the benefit of the needy who are the benefits of their decisions since responsible government is need of the hour towards good governance for the interest of the have nots in the governance. I am also repined to the state respondents those who betrayed the respondent no. 1 in the instant application.

Petition shall stand disposed of accordingly. Give this order copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. Misc. C/49/2011, Sr. CJ (A)/

Dated Aizawl, the 25th April, 2011

Copy to:

1. Smt. Thanzami Tochwawng W/o Mr. Zatlai, Venghlui- Aizawl through W. Sam Joseph, Advocate
2. Mr. Lalzamlia Sailo S/o Saikhuma Sailo, Melthum- Aizawl through Mr. C. Lalramzauva, Senior Advocate
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Govt. Advocate, District Court, Aizawl
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Mizoram- Aizawl through Govt. Advocate, District Court, Aizawl
5. The Assistant Settlement Officer- 1, Aizawl District: Aizawl
6. The Aizawl Development Authority, New Secretariat Complex, Khatla, Aizawl- Mizoram through Mr. A. Rinliana, Malhotra, adv.
7. The Town Planner Member, Aizawl Development Authority, New Secretariat Complex, Khatla, Aizawl- Mizoram through Mr. A. Rinliana, Malhotra, adv.
8. Officer in Charge, Aizawl Police Station, Aizawl through W. Sam Joseph, Advocate
9. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
10. Case record.

PESKAR