

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

TITLE SUIT NO. 05 OF 1988

Plaintiffs:

1. Mr. Liankhuma
Chaltlang, Aizawl
2. Mr. Biaksanga
Chanmari, Aizawl

By Advocate's : Mr. W. Sam Joseph

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
4. The President
Village Council/Court
Chaltlang- Aizawl
5. The President
Young Mizo Association (YMA)
Chaltlang Branch, Aizawl

By Advocate's for nos. 1-3 : Mr. R. Lalremruata, AGA

Date of Judgment & Order : 25-04-2011

BEFORE

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

JUDGMENT & ORDER

APOLOGY

Since the then Office/Court of Deputy Commissioner, Aizawl District, Aizawl was sadly fired/burnt on 29.11.1994 whilst very recently the Government of Mizoram under Notification No. A. 48011/2/2005-LJE, the 9th May, 2008 [Vide, the Mizoram Gazette, Extra Ordinary, Vol. XXXVII, 21.5.2008 Vaisakha, 31, S.E 1930 Issue No. 177] overwhelmed the order for kept in abeyance of the operation of separation of judiciary in Mizoram which retrieved the implementation for speedy process. Thereafter, according to Notification No. A. 48011/2/2008- LJE/61: Dt. the 1st July, 2008 [Vide, the Mizoram Gazette, Extra Ordinary: Vol. XXXVIII, 16.7.2008, Asadha 25, S.E. 1930, Issue No. 253], separation of judiciary from the Executive in Mizoram covers the whole state of Mizoram including the Autonomous District Councils area which in the previous notification excludes the three Autonomous District Council areas. The original entire

case record was thereby gutted by fire while the original suit was instituted during February, 1988, the instant case record is therefore a re-constructed form which may lead to some lacunae in the adjudication but I find and have confidence that there can be seen and found the truth although under not ascertained that whether all the complete records remain available in the present form or not. Anyway, here is the example where undue delay of adjudication process/justice is inimical to the value of judiciary and its efficacy. After pending for about 23 years in the trial and in the same court, it is a clarion calling to dispose of the case from the aegis of judiciary like the trial court towards delivery of justice for the needy.

GENESIS OF THE CASE

The plaintiffs in their plaint submitted that in the year 1973, the President, Village Council, Chaltlang- Aizawl namely Mr. Selkunga allotted a house site under House Pass No. 47 of 1973. As applied in the year 1977, the Deputy Commissioner i/c Revenue regularized the said House site pass under No. CCB-13 of 1977 with an area of 330 Sq.m. Later in the year 1978, as per Rule 6 of the Mizo District (Land & Revenue) Rules, 1977, the third defendant issued LSC No. 667 of 1978 in the name of the first plaintiff over the said suit land but reducing the area from 330 Sq.m to 245.33 Sq.m. The second plaintiff thereafter purchased the said land on 28.10.1982 from the first plaintiff for consideration of Rs. 23,000/- in the name of his father. For the embarrassing of the plaintiffs, an order under No. DST. 2/79-80/PT/27 Dated Aizawl, the 1st June, 1983 was received by the plaintiffs which cancelled the said LSC and it was again revoked on 1st June, 1983 as submitted representation to the then Minister i/c of Revenue. Thereafter, under No. DST. 2/79-80/PT/135 Dated Aizawl, the 5th July, 1983 cancellation order was again made with speaking the reasons that the said LSC obstructed the jhum path and water point approach road. No compensation was also paid to the plaintiff. Although duly served Legal Notice u/s 80 of CPC on 21.5.1987, it becomes non est. In view of the spot verification report submitted by Asst. Director, Land Revenue and Settlement Department, Govt. of Mizoram under No. T. 15016/44/90-DISP/DTE (REV) Dated Aizawl, the 4th April, 2000 which reveals that a small vacant plot of land only remains in the suit land which is also strongly reserved for having good scenery by the defendants 4 & 5, no space for utilizing the suit land by the plaintiff appears existed. Thus, amended the plaint as per the application Dt. 4/5/2000. The plaintiff therefore prays that-

- (1) A decree for declaring the plaintiff are the legal and rightful owner of the land under LSC No. 667/78 by setting aside the order under No. DST. 2/79-80/PT/135 Dated Aizawl, the 5th July, 1983 and give vacant and peaceful possession of the suit land to the plaintiff
- (2) A decree declaring that the land covered under LSC No. 667/78 does not obstruct the jhum path and water point approach road
- (3) By way of permanent and prohibitory injunction to restrain the defendants and other persons not to disturb the peaceful possession and enjoyment of the plaintiffs in the suit land
- (4) By way of mandatory injunction to prohibit the defendants from continuous obstructions of the plaintiffs in the suit land
- (5) Reasonable compensation as per the existing market value
- (6) Costs of the suit
- (7) Any other relief which this court deems fit and proper
- (8) A decree in favour of the plaintiff not less than Rs. 30,00,000/- (thirty lakhs) against the defendants and in favour of the plaintiffs as damage/compensation.

In the written statements submitted by the defendants 1 – 3, it was stated that before issuance of House Pass No. CCB. 13/1977, the suit land already obstructed the approach road of jhum land and water point and the instant LSC in favour of the plaintiffs is inconvenient for public purpose. Thus, prayed to dismiss of the suit.

The defendants 4 & 5 submitted a type written submission on 15/10/2001 stating that only because of favouritism inflicted by the then VCP, Chaltlang, the instant house pass existed and they repined for the same. Presently, in the suit land the main public road was already constructed by the PWD, Govt. of Mizoram and no space is remaining for construction of building by the plaintiff. Meanwhile, as of now in urban areas, the Village Council do not have any authority in the house site, they have nothing to say except repining on reviving LSC by the Revenue Department.

ISSUES

The following issues were framed in 07-08-1997 such as-

1. Whether the suit is maintainable in its present form and style
2. Whether the cancellation of LSC No. 667/78 is legally valid or not
3. Whether the defendants 1-3 are liable to arrange any other vacant land to the plaintiff with similar value of the suit land
4. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff produced only one witness namely- Mr. Biaksanga S/o Hrangai, Chanmari, Aizawl (Herein after referred to him as PW). The defendants 1-3 also produced only one witness namely- Mr. K. Lalmuakliana S/o Laltuahkhuma, Asst. Director, Land Revenue and Settlement Department, Govt. of Mizoram (Hereinafter referred to him as DW). The defendants 4&5 fails to produce their evidence although given an ample and sufficient time for the same.

The PW in his examination in chief reiterated the averments in the plaint including submissions, in his cross examination, he deposed that so far as his knowledge concerned, the suit land does not disturb public properties. He knows nothing about the relationship of the first plaintiff and the then President, Village Council, Chaltlang. In hi re-examination, de further deposed that although the government agreed to allot alternate vacant land after approached them by him for a number of time, it remains in vain and fails to comply the same.

The DW in his exam in chief deposed that the LSC No. 667/'78 was cancelled for the public interest meant for approach road of jhum land and water point. The said water supply remains in existence. Allotment of LSC No. 667/'78 is inconvenient for the general public. Reviving of the said LSC under Memo No. T. 15016/44/90-DTE (REV) Dt. 25.03.1998 was under stringent conditions like (i) no house construction work should be started unless and until completion of step construction toward the southern side (ii) the dumping area within LSC No. 667/'78 should be below the same (iii) prior intimation to Director, Land Revenue and Settlement Department is required for commencing of building construction within the area covered by LSC No. 667/'78. In his cross examination, he deposed that LSC No.

667/'78 was cancelled for the purpose of public. He knows that the suit land was purchased by Mr. Biaksanga from Mr. Liankhuma. No other landed pass/permit was passed within the suit land except the landed documents of Mr. Liankhuma. Till date no alternative vacant land was allotted to the plaintiff in lieu of cancellation of LSC No. 667/'78 even on perusal of the records of Revenue Department. He is not in a position to comment that the said cancellation was legal or not. No compensation was yet paid to the plaintiff on the said cancellation of LSC No. 667/'78. In re-examination, he further deposed that although he stated that Mr. Biaksanga had purchased the suit land from Mr. Liankhuma, he have not seen any Sale Deed for the same.

FINDINGS

Issue No. 1 Maintainability of the suit

Since the suit is instituted during the month of 1988, as per S. 1 of the CPC, only the spirit of the said Code was applicable in the territory. Before passing the milestone judgment by the Hon'ble Gauhati High Court in the case of **Lalchawimawia and Ors. v. State of Mizoram and Ors.** 1999 (2) GLT 410, in practice, the limitation Act, 1963 was not vogue in the terrain. More so, before making effective of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997), no proper court fee was practice in the state. I therefore find no irregularities which can vitiate the instant proceedings.

Issue No. 2 Cancellation of LSC No. 667/'78 is legally valid or not

The competent authority in the Government allotted the land to the plaintiff by issuing LSC No. 667/'78 to the plaintiff no. 1, it will invested the right to property as enshrined under Article 300 A of the Constitution of India as upheld by the Hon'ble Supreme Court in the case of **Anand Singh & Anr. vs State Of U.P. & Ors.** decided on 28 July, 2010 in connection with Civil Appeal No. 2523 of 2008, the Supreme Court has held that-

“30. The power of eminent domain, being inherent in the government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though right to property is no longer fundamental right but Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law.”

The very substantive due process like “*Save by authority of Law*” is applicable in the instant case. The main query is that under what section of law, the state defendants are authorized to cancel the LSC No. 667/'78 in the disguise of public interest like approach road of jhum land and water point could not be eschewed in the instant case. Thus, I find that the cancellation order under No. DST. 2/79-80/PT/135, Dated Aizawl, the 5th July, 1983 is not legally valid as baseless and no authority is found without paying reasonable compensation or at least forthwith allotted alternate vacant land equivalent to the value of the suit land by the defendant 1-3 whilst it is the constitutional rights of the plaintiffs to enjoy the land covered under LSC No. 667/'78. Very recently in the case of **Radhy**

Shyam(D)Thr. Lrs & Ors. vs State Of U.P.& Ors. decided on 15 April, 2011 in connection with Civil Appeal No. 3261 of 2011, their Lordship of Hon'ble Supreme Court concluded their holistic observation thus-

...53. From the analysis of the relevant statutory provisions and interpretation thereof by this Court in different cases, the following principles can be culled out:

(i) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good. - *Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.*, AIR (1954) SC 119, *Chiranjit Lal Chowdhuri v. Union of India* AIR (1951) SC 41 and *Jilubhai Nanbhai Khachar v. State of Gujarat* (1995) Supp. (1) SCC 596. (ii) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly - *DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana* (2003) 5 SCC 622; *State of Maharashtra v. B.E. Billimoria* (2003) 7 SCC 336 and *Dev Sharan v. State of U.P.*, Civil Appeal No.2334 of 2011 decided on 7.3.2011.

(iii) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the Court is not only entitled but is duty bound to scrutinize the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the land owner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(iv) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however, laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the land owner or other interested persons...."

The said cancellation order therefore is liable to set aside as no evidences reveals that reasonable compensation as per the Land Acquisition Act, 1894 was awarded to the plaintiffs.

Issue No. 3

Whether the plaintiffs are entitled to allot another vacant land in lieu

As per the findings under issue no. 2, the plaintiff is certainly entitled to allot another vacant land at the earliest if another compensation amount is not paid/will not be paid may be under the entity of Notification No. K. 52012/25/99- REV, the 22nd September, 2010 published in the Mizoram Gazette, Extra Ordinary; Vol. XXXIX, 23.9.2010, S.E. 1932, Issue No. 361. No need of further elaborations of the reasons.

Issue No. 4
Entitlement of relief claimed and it's extend.

As clearly seen in the submissions of parties and evidences adduced thereof, the suit land is not presently not suitable for the plaintiff as obviously admitted as needed for public purposes evident by deposition of DW, merely setting aside of the impugned cancellation order under No. DST. 2/79-80/PT/135, Dated Aizawl, the 5th July, 1983 and directing for re-possession of the suit land by the plaintiff will be a futile exercise, making acquisition process for awarding reasonable compensation as per the Land Acquisition Act, 1894 or directing the defendants 1-3 for allotment of other vacant land as alternative mode equivalent to the existing land value of the suit land will meet justice. Meanwhile, as also admitted and deposed by DW, the plaintiff No. 2 will be entitled to receive any benefits of decree to be passed in the instant case.

ORDER

The inevitable conclusion is that as the suit land under LSC No. 667/'78 is accepted and admitted as strongly needed for public purposes, the cancellation order under No. DST. 2/79-80/PT/135, Dated Aizawl, the 5th July, 1983 is hereby set aside and therefore directed the state defendants 1-3 as follows-

- (1) Making notification for the purpose of land acquisition of the suit land as per the existing Land Acquisition Act, 1894 and giving a reasonable compensation to the plaintiff no. 2 as per the current rates by completing draft award within six months from the date of this order. OR
- (2) Making order for allotment of alternative vacant land to the plaintiff no. 2 equivalent to the current valuation of the instant suit land to be allotted within six months from the date of this order.

The state defendants 1-3 are further directed to pay costs of the suit at Rs. 10,000/- (Ten thousand rupees) [Rs. 9000/- as Lawyers fee plus Rs. 1000/- as Stationery] to the plaintiff no. 2. The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA
 Senior Civil Judge- 2
 Aizawl District: Aizawl

Memo No. TS/5/1998, Sr. CJ (A)/

Dated Aizawl, the 25th April, 2011

Copy to:

1. Mr. Liankhuma, Chaltlang, Aizawl through Mr. W. Sam Joseph, Advocate.
2. Mr. Biaksanga, Chanmari, Aizawl through Mr. W. Sam Joseph, Advocate.

3. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Mr. R. Lalremruata, AGA
4. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department through Mr. R. Lalremruata, AGA
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The President, Village Council/Court, Chaltlang- Aizawl through Mr. W. Sam Joseph, Advocate.
7. The President, Young Mizo Association (YMA), Chaltlang Branch, Aizawl through Mr. W. Sam Joseph, Advocate.
8. District Collector, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
9. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
10. Case record.

PESKAR