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

TITLE SUIT NO. 05 OF 1996

Plaintiff:
Mr. B.T. Sanga
S/o D. Thianga (L)
Mission Compound
Kulikawn- Aizawl

By Advocate's : Mr. W. Sam Joseph

Versus

Defendants:
1. The State of Mizoram
   Through the Chief Secretary to the
   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 Secretary to the Govt. of Mizoram
   Sports & Youth Services
   Aizawl- Mizoram
5. The Director
   Sports & Youth Services
   Govt. of Mizoram
6. The President
   Village Council
   Luangmual- Aizawl

By Advocate's : Mr. R. Lalremruata, AGA

Date of Argument : 12-04-2011
Date of Judgment & Order : 15-04-2011

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

JUDGMENT & ORDER

The case as elicited in the plaint in brief is that the plaintiff was allotted a house site situated at Village Luangmual, the land identified as the old Jhum-land of Thanghuama. When the said land was allotted to the plaintiff on 9.11.1971 by issuing a pass, the land was free from encumbrances as per the records of the Revenue Department as well as the Village Council, Luangmual. As soon as the House Pass was issued by the President, Village Council, Luangmual, the Plaintiff constructed a small house within the said land and the plaintiff had planted a few hundreds of teak seedlings and some other fruit bearing trees, employing the late Upa Chuauthangpuia (IKK) of Luangmual Vengthar. While the plaintiff was looking after the land so dearly, to the plaintiff's utter surprise the plaintiff received a copy of the order Memo No.DLR/Misc-2-75-76/7 dated Aizawl,

the 23rd March 1976 issued by the defendant no.3 through a friend of the plaintiff, In the said Order, it was mentioned that the pass issued to the plaintiff was cancelled until further orders. Eventhough the said order concerns the plaintiff's land, no copy was endorsed to the plaintiff by the Defendant no.3. Further, before passing the said order, the plaintiff was not given any opportunity to show cause and the said order was passed in violation of the principle of natural justice and as well as the provisos of Lushai Hills District (House Site) Act, Mizo District Land & Revenue Act and Rules which are followed in Mizoram. Further in the said order, it was mentioned that the said order was passed in accordance with the Mizo District Council Executive (Revenue) Order No.28 of 1971 dated 23.12.1971. A close reading of the Executive Order No.78 of 1971 shows that the Village Council were prohibited from issuing allotment of lands with effect from 23.12.1971 and this order does not cancel the lands legally allotted by the Village Councils prior to 23.12.1971. The House Site allotted to the plaintiff prior to 23.12.1971 and the said order cannot cover the land allotted to the plaintiff. As per the provisions of the Lushai Hills District (House Site) Act 1953, the Village Council is competent authority to issue House Passes and nobody can challenge the validity of the pass legally issued by the Village Council. The Order issued vide Memo No. DLR/Misc – 2/75-76/7 dt.23rd March, 1976 is arbitrary, illegal and liable to be set aside/declared null and void so far it relates to the land belonging to the plaintiff. After the plaintiff was communicated the order Memo No. DLR/Misc – 2/75-76/7 dt.23rd March 1976, the plaintiff submitted representations to the Hon'ble Minister, i/c. Revenue and also to the then Lt. Governor but to no avail. Further, the plaintiff approached the defendant no.2 & 3 and requested them to convert the land covered under House Pass issued by the Village Council into Land Settlement Certificate as per the provisions of Revenue laws in Mizoram, but till date, no action was taken by the defendant no. 1 to 3 to cancel/revoke the order Memo No. DLR/Misc – 2/75-76/7 dt.23rd March 1976 and issued a regular LSC to the plaintiff. The plain reading of the Executive (Revenue) Order No. 28 of 1971 shows clearly that no land can be allotted by the Village Councils after 23.12.1971 and that order does not cancel or invalidate the land allotted to the plaintiff prior to 23.12.1971. Hence the order of cancellation passed by the defendant no.3 is pursuance of the said executive order cannot include the land which was allotted prior to the issuing of the said executive order. It appears that the defendant no.3 while passing the cancellation order had not given proper thought to the said executive order dt.23.12.1971. Hence the defendant no.3 has no locus standii to pass the said order of cancellation. The plaintiff being in the Indian Administrative Service, he was transferred and posted as Deputy Commissioner, Chhimtuipui District in the year 1984 and he remained at Saiha till Jan.88. During the plaintiff's absence from Aizawl, without his knowledge and consent, a building was constructed by the defendant No.4 & 5 through a Contractor for the purpose of Youth Hostel. As soon as the plaintiff came to know, he submitted another petition to the Hon'ble Minister, i/c. Revenue. But till date, no action was taken either to allot alternative site to the plaintiff or to give compensation for forcibly taking the plaintiff's land. On the basis of the representation, in the year 1989 the then Director Shri. Lungliana had directed one A.S.O. of the department to find a suitable place acceptable to the plaintiff in order to compensate the plaintiff. But till date, no offer was made by the defendants of any alternative site in lieu of the plaintiff's land forcibly occupied by the defendants. During the beginning of December 1995, the plaintiff received a letter from the Assistant Director, Land Revenue & Settlement, Mizoram requesting him to be present at the suit land on 12.12.1995, but the plaintiff had submitted a letter along with the letter received by him to the Assistant Director informing him that he would not be available on 12.12.95 and requested

him to fix another date for verification. In pursuance of the Plaintiff's request, the Asst. Director vide his letter Memo No.C.15016/17/95-DTE(REV) dt. Aizawl, the 13th Dec 95 postponed the date of verification on 19.12.95. The plaintiff explained the exact location of the suit land. Eventhough the Asst. Director, Land Revenue & Settlement, Mizoram had taken some steps to verify the land, the defendants have not taken any steps to settle the matter. As the plaintiff did not get any favourable orders from the defendants, he had issued notice through his counsel u/s. 80 CPC to all the defendants. The plaintiff is a House Tax paying native of Mizoram. Hence, exempted from paying of court fees. The subject matter of the suit is situated at Aizawl and the defendants are stationed at Aizawl. Hence this Court has jurisdiction to entertain and dispose of the suit. The cause of action for the suit is illegal cancellation of the land by the defendant no.3 vide order No. DLR/Misc – 2/75-76/7 dt.23rd March 1976 and construction of the building by the defendants nos.4 & 5 within the suit land and it arose on the date of passing of the said cancellation order, construction of the building and continues till the plaintiff is given possession of the land or adequately compensated. The plaintiff prayed for *a decree declaring that the Executive Revenue Order No.28 of 1971 dt.23rd Dec. 1971 does not cover the land allotted to the plaintiff on 29.11.1971 and the cancellation order is void so far it relates to the suit land confirm the title of the plaintiff over the suit land and order the defendants to issue over the said land in favour of the plaintiff. A decree directing the defendants to give vacant possession of the land to the plaintiff or to give alternate site to of the same value or adequate compensation as per the present market value. Directing the defendants to pay the compensation for trees and plants destroyed as per the rates fixed by the D.C. Aizawl. By way of permanent/ mandatory injunction the defendants be restrained from making any further structures within the suit land and any other action detrimental to the interest of the plaintiff. Any other relief to which the plaintiff is entitled to justice, equity and good conscience.*

The defendants filed written statements stating that the suit is barred by law of Limitation and remains deficiency of requisite court fees. More so, as the land allotted to the plaintiff was within Village Safety Reserve and is curbed by S. 13 (A) of the Mizoram Forest Act, 1955 which is beyond the jurisdiction of the Village Council of Luangmual. Thus prayed to uphold the cancellation order under No.DLR/Misc – 2/75-76/7 dt.23rd March 1976.

ISSUES

On perusal of the pleadings of both parties and after hearing of both parties, issues were framed on 28th May 1998. Meanwhile as admitted by both parties at the time of oral arguments to avoid any doubling issues, issue No. 5 viz. Whether the suit is barred by the principles of limitation, estoppel, waiver and acquiescence and Issue No. 6 viz. Whether the plaintiff has cause of action or not were deleted as similar with Issue No. 1 and 2 respectively. The amended form of issues are as follows-

1. Whether the suit is maintainable in its present form and style.
2. Whether there is any cause of action in favour of the plaintiff and against the defendant
3. Whether the VC Pass issued in favour of the plaintiff is valid.
4. Whether the plaintiff is entitled to any relief. If so to what extent?

BRIEF ACCOUNT OF EVIDENCE

For the Plaintiff:

After the issues were framed the plaintiff adduced his evidence by examining himself (Hereinafter referred to as PW- 1) and two other witnesses namely Smt. Suakthangi who was the Member Village Council, Luangmual (Hereinafter referred to as PW- 2) and Tlangkhamliani who is the daughter of Chuauthangpuia who helped the plaintiff in constructing the house within the suit land (Hereinafter referred to as PW- 3). After the plaintiff examined himself, he died on 20.7.2006. Thereafter his wife Smt. Vanchhingpuii was allowed to substitute the plaintiff.

The PW- 1 deposed that on 29th Nov., 1971, he was allotted the suit land by the then Village Council of Luangmual and was free from all encumbrances. He also constructed a house therein and is a payer of revenue to the Government of Mizoram regularly. Embarrassingly, he was informed that his land was Protected Area and was subsequently cancelled. He was issued the suit land by the competent authority as per the existing Land laws, he also submitted his representation to the authorities of the Government but in vain. Being a government servant, while he was posted at Chhimtuipui District from 1984 to 1988, he never knew about the suit land but when he returned to Aizawl in the middle of 1988, a construction for Sports & Youth Services, Govt. of Mizoram was made. After he preferred his grievances to various authorities in the Govt. and as it were non est, he served Legal Notice to the defendants on 20-11-1995. No response was also received from the notice receivers. Hence, the instant suit.

Ext. P- 1 is his Pass over to the suit land
Ext P – 2 is the Tax receipt
Ext P – 3 is the order by Director Land Revenue Memo No.DLR Misc 75-76/7 dt.23.3.1976
Ext P – 4 is the Executive order 28 of 1971 dt. 23.12.1971
Ext P – 5 & 6 are representation submitted to the Minister, Revenue
Ext P – 7 is representation to Lt. Governor
Ext P – 8 is order of Asst. Director Revenue No.C.15016/17/95-DTE (REV) dt.13.12.1995
Ext P-9 is a copy of the lawyers notice dt.20.12.1995 and
Ext P-10 is the house tax paid certificate.

In his cross examination, he further deposed that he was not aware that the suit land was a Protected Area or not except through the impugned order No. 28 of 1971. He denied that he was not construct any dwelling house in the suit land.

In re-exams, he deposed that alongwith issuance of his land pass, the other persons like Pu Robula (L), Pu Vaiveng and Pu Lalnuntluanga (MLA) were also obtained Pass adjacent to the suit land.

The PW- 2 deposed that she was a member of Village Council since 1987 till date of her deposition. She knows that the plaintiff had a plot of land in Luangmual village originally and was occupied by Youth Hostel. She affirm that during 1971, the Village Council of Luangmual was competent to issue House Pass and hence issued the suit land to the plaintiff by the then VCP namey- Pu Saptawna on 29/11/1971. She much aware of the signature of the said Pu Saptawna and Ext. P- 1 (a) is the signature of Pu Saptawna. She knows the exact location of the suit land belonging to the plaintiff. As per the record maintained by the concerned Village Council, no compensation was awarded to the plaintiff. The House site pass of the plaintiff is prior to curb the Village Council from issuing House site Pass without the previous sanction of the Executive Committee of the Mizo District Council.

In her cross examination, she deposed that the plaintiff never stayed at Luangmual. So far as her knowledge concerned the plaintiff had constructed a small house in the suit land although he never occupied the same but no longer existed. She was not a member of Luangmual Village Council during the regime of Pu Saptawna as the VCP. She denied that the suit land as beyond the area of Luangmual. She knows nothing about why the plaintiff do not convert his landed documents into LSC.

The PW- 3 deposed that the name of her father is Mr. Chuauthangpuia and he used to stay at Luangmual /Vengthar. In the year of 1972, his father was asked by the plaintiff to look after the suit land by constructing a house. Accordingly, her father assisted the plaintiff for construction of a house in the suit land in the month of September, 1972. Her father also planted Teak trees and other fruit bearing trees in the suit land. Her father was died on 10-06-1994. So far as her knowledge concerned, the suit land is occupied by the Government by constructing Youth Hostel and the VCP at that time was competent to issued House site pass at Luangmual. She do not have any relationship with the plaintiff and her father was employed by the plaintiff for construction of house in the suit land.

In her cross examination, she deposed that in the year 1972, her family was migrated to Luangmual village and thereby permanently and continuously stayed at Luangmual. She was present at the time when the plaintiff asked her father to look after the suit land. She denied that her father or the plaintiff were not planted any crops in the suit land. Her father was not paid monthly remuneration by the plaintiff but provided a weekly ration/quota by the plaintiff although not known the exact amount/quantum.

In re-examination, she deposed that so far her memoirs, her father was paid Rs. 50/- per day by the plaintiff as wages to look after the suit land.

For the Defendant:

The defendants adduced evidence by examining Shri. Lalhmachhuana S/o Vawmhleia (L), ASO-1 (Herein after referred to as DW- 1) and P.Zatluanga S/o Liansanga Surveyor – II (Herein after referred to as DW- 2).

The DW- 1 deposed that the land allotted to the plaintiff was the old jhum land of Mr. Thanghuama which was within Village Supply Reserve of Luangmual as enshrined u/s 13 (A) of the Mizoram Forest Act, 1955, allotment made by the Village Council of Luangmual to the plaintiff was therefore ultra vires. The claimed of the plaintiff was like teak samplings and fruit bearing trees which elicited that the suit land was Agricultural land not used for residential purpose. The plaintiff does not have any cause of action in the instant case.

In his cross examination, he deposed that issuance of cancellation of the suit land was due to declaration of “Protected Area which was effective from 23.12.1971 prior to that the suit land was not a “Protected Area”. The impugned House Site pass was issued by the Village Council of Luangmual without the knowledge of Revenue Department

The DW- 2 deposed that as detailed by the Asst. Director of Land Revenue & Settlement Department, sometimes in the months of

September/October, 1985, he conducted spot verification of the suit land for Site Plan of Youth Hostel. Before such verification, he also have had a pre-surveyed but found no signs of development of the suit land nor plantation of crops including teak samplings. He also obtained No Objection Certificate from the Village Council concerned, the Govt. whereof approved his demarcation report on 10/3/1986 for issuance of DPL No. 8 of 1986 with an area of 7.57 bigha.

In his cross examination, he further deposed that before he joined his service in Revenue Department, Govt. of Mizoram in 1992, he was a teacher in Maubawk Middle School. Neither he knows the cancellation order of the suit land nor the owner of the suit land.

In his re-examination, he deposed that it is his first time to saw Ext. P- 3 viz. Order Dt. 23rd March, 1976. Passes were cancelled due to the Executive Order No. 28 of 1971.

TERMS OF RIVALRY

Ld. AGA for written and oral arguments submitted that due to deficiency of requisite court fees in the plaint and non receiving of Legal Notice served to the State Defendants, the suit is liable to dismiss. The suit is filed on 6.6.1996 while cancellation order was issued on 23.3.1976. After appreciating evidences led by both parties, Ld. AGA prayed to dismiss of the suit due to no grounds existed in favour of the plaintiff.

Mr. W. Sam Joseph, Ld. Counsel for the plaintiff in his written and oral arguments contended that From the evidence on record it is clear that the Pass of the plaintiff was issued by the Village Council, Luangmual by virtue of the powers conferred to it by the provisions of S.3 of Lushai Hills District (House Sites) Act, 1963 the Village Council, Luangmual had issued the pass in favour of the plaintiff. Section 3 of the said act runs thus: *"Allotment of site:- 1) Subject to the provisions of sub-section (2) of this section, a Village Council shall be competent to allot sites within its jurisdiction for residential and other non-agricultural purpose with the exception of shops and stalls which include hotels and other business houses of the same nature. Provided that the Administrator (State of Mizoram) may, at any time by notification, declare that any village or a particular locality is a protected area where allotment of sites shall be done by Village Council only with the previous approval of the Administrator (State of Mizoram)."* As regards the applicability of the said Lushai Hills District (House Sites) Act, 1963 the said act was saved and it would continue to the Union Territory of Mizoram by virtue of the provisions of para 8 (1) of the Dissolution of the Mizo District Council (Miscellaneous Provisions) Order, 1972 and thereafter the said Acts and rules continued to apply to the state of Mizoram by virtue of the provisions of Para 3 of the State of Mizoram Adaptation of Laws Order (No.2) 1987. From the evidence adduced by both the parties it is clear that the notification of the protected area was issued after the pass was issued in favour of the plaintiff. Hence the cancellation on the basis of the said notification was illegal and the same is to be set aside. If the person has to be deprived of his property it should be by the authority of law. In this connection he reproduced the provisions contained under Article 300A of the Constitution of India and it runs thus **300A. Persons not to be deprived of property save by authority of law.— "**No person shall be deprived of his property save by authority of law."

In respect of alleged lacunae in legal notice, W. Sam Joseph further contended that a copy of the notice under S.80 CPC was admitted in

evidence with out any objection. Hence, it is clear that the notice was properly served. In this connection he pointed out the case decided by the Supreme Court and the Orissa High Court. **Sitaram Motilal Kalal, Appellant v. Santanuprasad Jaishanker Bhatt, Respondent, AIR 1966 SC 1697; (1966) 1 SCWR 974:** The **Supreme Court** has ordered that ***"Admission of documents means admission facts contained in the documents."*** and in the case of **BUDHI MAHAL V GANGADHAR, 46 Cut LT 287** : it was decided that *"When a document has been admitted without objection, it means entire contents thereof are admitted."*

He further took reliance in the case of **STATE OF MEGHALAYA Vs.U.WILLIAM MYNSONG, (1987) 2 Gauhati Law Reports 221** it was decided by the Gauhati High Court that "In the aforesaid notification dated 14.3.1966, the Governor of Assam directed that the Limitation Act, 1963 shall not apply to the Tribal areas of Assam specified in part A of the table appended to paragraph 20 of the Sixth Schedule to the Constitution of India. The above notification dated 14.3.66 came into force from the 1st day of January, 1964 …….. After coming into force of the North-East Areas (Re-organisation) Act, 1971, the notification remained in force by virtue of section 7 read with 79 of the said Act. Therefore, our conclusion is that the notification referred to above which came into force on and from 1.1.64 is still in force ….. We, therefore, hold that the provisions of the Limitation Act, 1963 have no application to the tribal areas of the State of Meghalaya". He thereby submitted that it is clear that the ratio of this decision no doubt holds good to Mizoram. In the case of RSA No.11 of 2003 **Shri Ramthlengliana & ors Vs. The Secretary Revenue Department, Govt. of Mizoram,** it was decided by Justice A.B. Pal in the Aizawl Bench of the Gauhati High Court that "The list of the Central and State Acts in force after Mizoram obtained Statehood have been given in the Mizoram Compendium of Laws Vol-1. This lists consists Rule 161 Acts which does not include Indian Limitation Act. Mr. Sailo, Learned Govt. Advocate referred to the decision of this court in a similar case that as the notification issued the Assam Government about non-applicability of the Indian Limitation Act in the Lushai Hill District was not saved after Mizoram obtained Statehood, the Indian Limitation Act shall be closely followed in disputes between the persons not belonging to the Schedule Tribe in the State of Mizoram as provided in Rule 21 of the procedure to administer Justice in Lushai Hills, it has been clearly mentioned that by notification No.5868-A.P., dated the 8th September, 1934 application of the said act has been barred. In view of the above legal position it was not necessary for the trial court to condone the delay and consequently the observation of the appellate court in para-3 of the judgment is not in accordance with law in force. The appeal is therefore, dismissed with the direction that the trial court on receipt of the case record as remitted by the appellate court shall proceed with the suit according to the directions given without taking for consideration of question of limitation in view of the legal position explained above." As regards the payment of court fee, the plaintiff being a house tax-paying native of Mizoram was exempted from paying court fee before the Court Fees Act was extended to the state of Mizoram. The Court Fees (Mizoram Amendment) Act 1996 was extended to Mizoram only on 22nd April 97. This suit was filed on 6.6.96 and at that time the said act was not extended to the state of Mizoram. As per the Notification No.G.17013/8/96-FFC, the 21st July 1997 it was mentioned that "In exercise of the powers conferred by sub-section 3 of section 1 of the Court Fees (Mizoram Amendment) Act, 1996 (Act no. 5 of 1997) the State of Mizoram hereby appoints 22nd April/97, the date on which all the provisions of the said Act are deemed to have come into force in the whole of the State of Mizoram." From the said notification it is clear that the Court fee act was not extended to Mizoram prior to 22nd April/97.

By appreciating evidence, he argued that from the evidence on record it is clear that the plaintiff was issued with a house Pass by the then President, Village Council was competent to issue house pass and also the notification declaring Luangmual as protected area was made after the said pass was issued in favour of the plaintiff, hence the grounds on which the cancellation was made was not legal. The fact that the cancellation order was issued by the Union Territory Government proves that the Government accepted the existence of the Pass issued by the Village Council, Luangmual. If they had not accepted the issuance of the Pass by the said Village Council, the question of cancellation does not arise. The fact that the grounds on which the cancellation was made was not legal, the said cancellation order is to be set aside.

FINDINGS
Issue No. 1
Maintainability of the suit

Although a belated stage, I must look into its maintainability challenged by the defendants like (i) non compliance of S. 80 of CPC (ii) Deficiency of requisite court fees in the plaint and (iii) Barred of the suit by Law of Limitation.

In respect of the first crux, a copy of Legal Notice Dt. 20th Nov., 1995 by Ld. Counsel for the plaintiff is annexed in the plaint as ANNEXURE- 8 which is not specifically denied in the written arguments of defendants 1 to 5 in the suit. No supporting evidence is found in depositions of both witnesses of parties to follow the arguments of Ld. AGA for the state defendants. Thus, it is indispensable at this stage to uphold the submissions of the plaintiff.

In regards to deficiency of requisite court fees, I am convinced by the submission of Mr. W. Sam Joseph saying that the Court Fees (Mizoram Amendment) Act 1996 was extended to Mizoram only on 22nd April 97. This suit was filed on 6.6.96 and at that time the said act was not extended to the state of Mizoram. As per the Notification No.G.17013/8/96-FFC, the 21st July 1997 it was mentioned that "In exercise of the powers conferred by sub-section 3 of section 1 of the Court Fees (Mizoram Amendment) Act, 1996 (Act no. 5 of 1997) the State of Mizoram hereby appoints 22nd April/97, the date on which all the provisions of the said Act are deemed to have come into force in the whole of the State of Mizoram." From the said notification it is clear that the Court fee act was not extended to Mizoram prior to 22nd April/97. The answer is therefore affirmative in favour of the plaintiff.

In respect of law of limitation, may be because of unsophisticated society and backwardness in law and its principles, no separate Notification or Adaptation order of the Limitation Act, 1963 (Act No. 36 of 1963) for the state of Mizoram except on judicial pronouncement like in the case of **L. Biakchhunga vs State Of Mizoram And Ors**. decided on 1/8/2005 and reported in (2006) 2 GLR 610, the Hon'ble Gauhati High Court has held that-

> "27. Exclusion of applicability or enforceability of a statutory enactment cannot be readily or lightly inferred. It has to be apparent on the face of the legislation or indubitably determinable from the statements and objects of reasons thereof. The extant clause of a statute is an index of the scope

and spread thereof and either the makers of the legislation or any authority specially empowered can permissibly curtail its amplitude. The extant clause of the 1963 Act extends it to the whole of India except Jammu and Kashmir. Had it been the intention of the Parliament to except the application thereof either to the territories now constituting the State of Mizoram or any part thereof or its tribal areas there would have been evident indications therein. To read any inhibition in the matter of application of the 1963 Act to the State of Mizoram or any part thereof as suggested on behalf of the appellant would amount to judicial legislation which is irrefutably impermissible.

.....30. Having regard to the determinate unambiguous and unequivocal language employed in the extent clause of the 1963 Act, in my view, there is no scope what so ever to suppose that the interdiction on the applicability thereof occasioned by the 1966 notification was intended to be continued in the territories comprising the Union territory of Mizoram and now the State of Mizoram. In my considered view, therefore, with the elevation of the Mizo District to the Union territory of Mizoram, the 1966 notification ceased to have any force vis–a–vis the areas comprising the erstwhile Mizo District and the 1963 Act being a Central Legislation in absence of any other impediment as conceived of in the Sixth Schedule to the Constitution of India or otherwise applied proprio vigore without any reservation to the areas now forming the State of Mizoram. In other words, the 1963 Act, thus, became enforceable in the territories constituting the erstwhile Mizo District and now the State of Mizoram. The non–inclusion of the 1963 Act in the list, of Central Acts applicable to the State of Mizoram and the inclusion thereof in the list of such Acts, applications whereof are barred, being traceable only to the 1966 notification are inconsequential in the face of the constitutional and historical background of the relevant legislations noticed hereinabove. The enactment of the 1963 Act is an exercise of the legislative powers vested in the Parliament and having regard to the extent of its application any fetter on its applicability in the State of Mizoram in absence of any restriction as conceived of under the Sixth Schedule or otherwise would amount to unauthorized truncation of such constitutional empowerment.

....The 1966 notification, however, did not present itself to be considered by this Court in Temjankaba and Ors. v. Temjanwati and Ors. (1991) 2 GLR 200, where the question of applicability of the 1963 Act to the State of Nagaland fell for consideration. This Court, having regard to the extent clause of; the, 1963 Act answered it in the affirmative observing that the State of Nagaland being part of India, the Act was enforceable there. This Court in Lalchawimawia and Ors. v. State of Mizoram and Ors. 1999 (2) GLT 410, had an occasion to dwell on the same topic. Negating the contention against the applicability of the 1963 Act based on the 1966 notification/this Court returned a finding that in absence of a specific notification issued by the Government of Mizoram, the law of limitation was applicable. I respectfully concur with the said view, however, for the reasons enumerated hereinabove in addition."

The said judgment is obviously delivered after institution of the instant suit while the defendants does not have any reliance whether

Adaptation Order or any Precedent which speaks applicability of the said Limitation Act at the time of filing of the instant suit. Howsoever, at this very belated stage, I have no reasons to reject the plaint on the arguing point of law of Limitation as observed in **Ram Prakash Gupta Vs. Rajiv Kumar Gupta & Ors** in connection with Appeal (civil) 4626 of 2007 decided on 03/10/2007 reported in 2007 (10) SCR 520, 2007 (10) SCC 59, 2007 (11) SCALE 549, 2007 (11) JT 472, their Lordship of Hon'ble Supreme Court has held that-

> "17) For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the Court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the Court to verify the entire plaint. Order VII Rule 12 mandates where a plaint is rejected, the Court has to record the order to that effect with the reasons for such order.
>
> .....19) It is also relevant to mention that after filing of the written statement, framing of the issues including on limitation, evidence was led, plaintiff was cross-examined, thereafter before conclusion of the trial, the application under Order VII Rule 11 was filed for rejection of the plaint. It is also pertinent to mention that there was not even a suggestion to the plaintiff/appellant to the effect that the suit filed by him is barred by limitation.
>
> 20) On going through the entire plaint averments, we are of the view that the trial Court has committed an error in rejecting the same at the belated stage that too without adverting to all the materials which are available in the plaint."

The issue no. 1 is therefore affirmative in favour of the plaintiff at this belated stage.

Issue No. 2
Cause of action in favour of the plaintiff and against the defendants

As discussed before, issues on cause of action should be dealt before framing of issues in the light of O. VII, R. 11 of the CPC towards rejection of the plaint. Anyhow, evidences of the plaintiff in a very nutshell determined cause of action. It is therefore no need further discussions on it except to dispose of the suit on merit.

Issue No. 3
Village Council Pass on the suit land is valid or not

Cogently, the instant issue is the main crux of the proceedings, oral evidences of the plaintiff and the defendants is not much helpful to resolve the rivalry. In the instant case, as admitted in arguments, the Village Council of Luangmual was competent to issue House Site Pass during 1971 even in Luangmual village. The points of arguments of the defendants is that whether the said House Site Pass was within village area or in the elakas of Village Safety Reserve. By virtue of S. 3 of the Lushai Hills District (House Sites) Act, 1953, the Village Council were competent to allot sites within its jurisdiction for residential and other non-agricultural purpose except stalls, shops including hotels and other business houses of the same nature. Whereof, Annexure – 1 in the plaint is 'Inhmun Pass' (House Site

Pass) issued by the Village Council, Luangmual Dt. 29-11-1971 which itself speaks that the said impugned Pass was solely meant for residential purposes as the name and form of Pass indicates.

Moreover, as admitted even during arguments, Order for cancellation of House Site pass issued to the plaintiff over to the suit land Dt. 23rd March, 1976 as ANNEXURE 2 in the plaint is made on the basis of Mizo District Council Executive (Revenue) Order No. 28 of 1971 but the said Mizo District Council Executive (Revenue) Order No. 28 of 1971 was issued on 23rd Dec., 1971 under Memo No. REV. 1/71/2206-15 while 'Inhmun Pass' (House Site Pass) issued by the Village Council, Luangmual in favour of he plaintiff was made on 29-11-1971, the said Order No. 28 of 1971 reads thus-

> *"Under section 3 (1) of the Lushai Hills District (House Sites) Act, 1953 as amended the Executive Committee of the Mizo District Council is pleased to declare that all lands within the jurisdiction of the Village Councils of Luangmual, Tanhril and Sakawrtuichhun shall henceforth be "Protected Area" within the meaning of the said Act.*
>
> *No allotment of land for residence, trade, Agricultural lands or other purposes within the said area shall be made by the Village Councils without previous sanction of the Executive Committee of the Mizo District Council.*
>
> *This order shall not bar the Village Councils from distributing ordinary jhum lands for a year within their respective jurisdictions"*

It is very clear that (i) the said Order is effective from the date of Order viz. 23rd Dec., 1971 under Memo No. REV. 1/71/2206-15 but not retrospective effect (ii) the meaning of "Protected Area" become vague although deposed by DWs that it was for the purpose of S. 13 (A) of the Mizoram (Forest) Act, 1955, the said Order itself speaks that "'Protected Area' within the meaning of the said Act." The said Act will be obviously as earlier mentioned that the Lushai Hills District (House Sites) Act, 1953 as amended. S. 13 of the Mizoram (Forest) Act, 1955 embodied that-

"13. Village Forest Reserves:-
(1) Three classes of Village Forest Reserves:- The Village forest reserves constituted under section 12 may be of three classes, namely -
(a) Village Safety Reserve, that is- reserve for the protection against fire from without or reserve constituted in the interest of health and water supply. No one shall utilize for any purpose, any portion of land inside this reserve and no
trees shall be cut in this reserve except with the permission of the State Government. The Village Council may dispose of any dead trees in the manner it considers most beneficial for the village.
(b) Village supply Reserve, that is, reserve for the supply of the needs of the village- Any person resident in the village may cut trees and bamboos from this reserve for his household needs.
(c) Protected Forest Reserve:- That is reserved for protection of valuable Forest from destruction for the interest of the village communities. No one shall utilise for any purpose any portion of land inside this Protected Forest Reserve and no tree shall be cut in the Protected Forest Reserve except with the permission of the State Government"

Briefly, Mizo District Council Executive (Revenue) Order No. 28 of 1971 is not applicable in the suit land which can detriment the interest of the plaintiff at any costs and is not binding to the suit land pursuant to the detrimental action of the plaintiff. Cancellation Order of the suit land under Memo No. DLR/Misc – 2/75-76/7 dt.23rd March, 1976 is liable to set aside in respect of the plaintiff only.

It appears that instead of S. 13 (a) of the Mizoram (Forest) Act, 1955, it will fall u/s 13 (c) of the Mizoram (Forest) Act, 1955 but which the order itself does not disclose at all. This arbitrary and capricious Order No. 28 of 1971 was issued on 23rd Dec., 1971 under Memo No. REV. 1/71/2206-15 by the then Mizo District Council was not bind the suit land. However, if it might be within the "Protected Forest Area", without providing any alternate modes or awarding compensation to the plaintiff, no drastic eviction can be imposed as held by the Hon'ble Gauhati High Court in the case of **Yamkhomang Haokip vs State Of Manipur And Ors**. decided on 12 July, 2000 reported in (2003) 3 GLR 409.This issue also simply negative for the defendants.

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

Since the Village Council Pass issued by Luangmual Village Council in favour of the plaintiff is upheld in the above discussions, I accept the contentions of Mr. W. Sam Joseph saying that it is the constitution rights of the plaintiff to enjoy title of ownership of the suit land under Article 300 A of the Constitution of India also remains 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 plaintiff is therefore entitled to the relief claim being deprivation of his constitutional rights by the state defendants.

Again, save by authority of law is one conditions, meanwhile, the relief sought by the plaintiff is reiterated that-

(a) A decree declaring that the Executive Revenue Order No.28 of 1971 dt.23rd Dec. 1971 does not cover the land allotted to the plaintiff on 29.11.1971 and the cancellation order is void so far it relates to the suit land confirm the title of the plaintiff over the suit land and order the defendants to issue over the said land in favour of the plaintiff.
(b) A decree directing the defendants to give vacant possession of the land to the plaintiff or to give alternate site to of the same value or adequate compensation as per the present market value.
(c) A decree directing the defendants to pay the compensation for trees and plants destroyed as per the rates fixed by the D.C. Aizawl.

(d) A decree by way of permanent/ mandatory injunction the defendants be restrained from making any further structures within the suit land and any other action detrimental to the interest of the plaintiff.

(e) A decree of any other relief to which the plaintiff is entitled to justice, equity and good conscience.

The relief claimed by the plaintiff is therefore alternate arrangement with compensation of trees and plants destroyed as well as retraining of the defendants from making any development of the suit land and constructing of any building in the suit land which creates same ambiguous and vagueness in the relief so sought.

Anyway, it can be presumed that instead of claiming compensation of on the suit land, the plaintiff prays trees and plants destroyed in the suit land by the defendants and making alternate arrangement and other costs etc.

Since I am not in a position to grant any relief beyond pleadings as held in **Bachhaj Nahar vs. Nilima Mandal and Anr** (2008) 17 SCC 491. It is relevant to extract the principles enunciated in para 23 of the judgment which are as follows.

> "23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property `A', court cannot grant possession of property `B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

The plaintiff will be entitled to alternate arrangement of landed property which is coping with Government policies under 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 as well as making assessment of his crops and planted trees within the suit land and by giving reasonable compensation for the same as per the current existing rates.

DIRECTIVES

In view of the above findings and reasons, it is ordered and decreed that the plaintiff the owner of the land and properties situated/located therein of Inhmun Pass' (House Site Pass) issued by the Village Council, Luangmual Dt. 29-11-1971. The defendants shall make alternate landed property arrangement for the plaintiff within one year from the date of this order which will equivalent to the current Market value of the suit land. The defendants shall also pay compensations on crops and other trees cultivated in the said land within one year from the date of this order by

making assessment although might be annihilated at this stage assigning to collect any evidence by the Assessing Authority. And also pay Rs. 12,000/- (For Lawyers Fee at Rs. 10,000/- and Rs. 2000/- for conveyance charge) the costs of this suit, with interest thereon at the rate of 13% percent per annum from this date till the date of realization. Cancellation Order of the suit land under Memo No. DLR/Misc – 2/75-76/7 dt.23rd March, 1976 is also hereby set aside in respect of the plaintiff only as held in **M. Meenakshi v. Metadin Agarwal** reported in (2006) 7 SCC 470, the Supreme Court observed that:

> "18. It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities."

The case shall stand disposed of.

Give this copy to all concerned.

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

Memo No. TS/5/1996, Sr. CJ (A)/ Dated Aizawl, the 15th April, 2011

Copy to:

1. Mr. B.T. Sanga S/o D. Thianga (L), Mission Compound, Kulikawn- Aizawl through Mr. W. Sam Joseph, Advocate.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Secretary to the Govt. of Mizoram, Sports & Youth Services, Aizawl- Mizoram through Mr. R. Lalremruata, AGA
6. The Director, Sports & Youth Services, Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. The President, Village Council, Luangmual- Aizawl through Mr. R. Lalremruata, AGA
8. District Collector, Aizawl District- Aizawl through Mr. R. Lalremruata, AGA
9. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
10. Case record.

PESKAR