

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

## Civil Misc Application No. 134 of 2011

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

Petitioner:

Mr. Lalzamlia Sairo  
S/o Saikhuma Sairo  
Melthum- Aizawl

Versus

Respondents:

1. Smt. Thanzami Tochwang  
W/o Mr. Zatlaia  
Venghlui- Aizawl (Plaintiff)
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. C. Lalramzauva, Sr. Adv. 2. Mr. T.J. Lalnuntluanga, Adv. 3. Mr. K. Laldinliana, Adv. 4. Mr. James Thanghmingmawia, Adv.
For the respondent no. 1	: 1. Mr. W. Sam Joseph Adv. 2. Mr. Hranghmingthanga Ralte, Adv. 3. Mr. F. Lalenglina, Adv. 4. Mr. Francis Vanlalzuala, Adv. 5. Mr. C. Lalfakzuala, Adv.
For the respondents 2-6	:
Date of hearing	: 12-08-2011
Date of Order	: 12-08-2011

## **ORDER**

### **SUBMISSIONS**

This is a Civil Misc application filed by Mr. Lalzamlana Sailo to vacate/discharge the temporary injunction passed by this court dt. 25/4/2011 in Civil Misc. Application No. 49 of 2011 in DS No. 7 of 2011 by virtue of O. 39 rule 4 of the CPC. Wherein, this court restrained the petitioner/defendant no. 1 as follows-

*“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.”*

The respondent no.1/plaintiff also filed written objections, in short, without change of circumstances and proof of undue hardship to the petitioner, the petition is objected.

### **POINTS OF RIVALRY**

At the time of hearing of the petition, Mr. C. Lalramzauva, learned Senior Advocate for the petitioner submitted that undue hardship is caused due to the temporary injunction which stayed the construction work of the petitioner in view of price escalation for collecting materials and loss of prospective earnings. Learned senior advocate had taken reliance in **M. Gurudas & Ors vs Rasaranjan & Ors on 13 September, 2006 in Appeal (civil) 4101 of 2006** reported in 2006 (8) SCC 367 by reading out of the relevant paragraph as-

“Another question of some importance which was required to be posed and answered was as to whether in a situation of this nature the plaintiffs would be asked to furnish any security in the event of dismissal of the suit in respect of any of the properties would the defendants be sufficiently compensated?”

He alleged that this court did not bear in mind of the above ratio at the time of granting injunctions and raised whether the respondent no.1/plaintiff can pledge the same or not.

Mr. W. Sam Joseph, Ld. Counsel for the respondent no.1/plaintiff submitted that only two grounds viz. (i) change of circumstances and (ii) undue hardship is essence for discharge of the impugned interim injunction in accordance with O. 39 rule 4 of the CPC, there is no grounds in the first ingredients at all and even in the second essence, counter claim is also prayed by the petitioner/defendant no.1 in the main suit which covers all remedy if situation may come to dismissal of the suit on merit. Certainly, digging of the foundation of the construction of the respondent no. 1 is endangering for the safety of the building of the respondent no.1/plaintiff 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 respondent no.1/plaintiff. Thus, the ingredients, prima facie case, balance of convenience and irreparable injury is proof by the plaintiff/respondent no.1. He again relied in **M/S Gujarat Pottling Co.Ltd.**

**& Ors vs The Coca Cola Co. & Ors** decided on 4 August, 1995 reported in 1995 AIR 2372, 1995 SCC (5) 545, the operative part is as follows-

“The grant of an interlocutory injunction during the pendency of legal proceedings is a matter requiring the exercise of discretion of the court. While exercising the discretion the court applies the following tests - (i) whether the plaintiff has a prima facie case; (ii) whether the balance of convenience is in favour of the plaintiff; and (iii) whether the plaintiff would suffer an irreparable injury if his prayer for interlocutory injunction is disallowed. The decision whether or not to grant an interlocutory injunction has to be taken at a time when the existence of the legal right assailed by the plaintiff and its alleged violation are both contested and uncertain and its alleged violation are both contested and uncertain and remain uncertain till they are established at the trial on evidence. Relief by way of interlocutory injunction is granted to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the 'balance of convenience' lies. [see: *Wander Ltd. & Anr. v., Antox India P. Ltd.*, 1990 (supra) SCC 727 at pp. 731-32]. In order to protect the defendant whilst granting an interlocutory injunction in his favour the Court can require the plaintiff to furnish an undertaking so that the defendant can be adequately compensated if the uncertainty were resolved in his favour at the trial.”

Mr. W. Sam Joseph concluded that balance of convenience lies on them and a prima facie case remains alive whilst irreparable injury will be caused if discharging of the said temporary injunction.

### FINDINGS

Upon hearing of both parties and on perusal of case records although undue hardship may be caused against the petitioner/defendant no. 1, the submissions of learned counsel Mr. W. Sam Joseph is correct as duly found that in the counter claim, the petitioner/defendant no. 1 make a claims like huge amount of money on account of illegal interference in his construction, another huge amount of money is claimed on account of price escalation on account of collection of materials for construction of building and other damage cost like mental suffering, cost of the suit.

Thus, the impugned interim injunction granted by following the principles enunciated 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. And also complied the ratio laid down in **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; **Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Ors.** decided on September 11, 2009 and reported in (2009) 10 SCC 388, is remains found as a sine quo non whilst remedy remain lies in case of dismissal of the suit on merit to cure the hardship caused to the petitioner/defendant no. 1 by the impugned temporary injunction at the end of the trial.

## 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 obviously 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 and remedial measures remains alive in case of winning the suit.

Thus, petition is rejected and is disposed of but no order as to costs.

Give this order copy to all concerned.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 2  
Aizawl District: Aizawl

Memo No. Misc. C/134/2011, Sr. CJ (A)/

Dated Aizawl, the 12<sup>th</sup> August, 2011

Copy to:

1. Mr. Lalzamlia S/o Saikhuma Sailo, Melthum- Aizawl through Mr. C. Lalramzauva, Senior Advocate
2. Smt. Thanzami Tochhawng W/o Mr. Zatlaia, Venghlui- Aizawl through W. Sam Joseph, Advocate
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Govt. Advocate, District Court, Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Mizoram- Aizawl through Govt. Advocate, District Court, Aizawl through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer- 1, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
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. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
9. Case record.

PESKAR