

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

TITLE SUIT NO. 11 OF 2002

Plaintiff:

Smt. Zampuii
D/o Rosiama
Chanmari West, Aizawl

By Advocates

: 1. Mr. W. Sam Joseph
2. Mr. H. Laltanpuia
3. Mr. Zochhuana

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
4. The Assistant Settlement Officer – I
Land Revenue and Settlement Department
Govt. of Mizoram
Aizawl District: Aizawl
5. Smt. Lalmalsawmi
D/o Sawichhinga (L)
Ramhlun North - Aizawl

By Advocates

:

For the defendants 1-4

: 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendant 5

: 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Date of Arguments

: 03-08-2011

Date of Judgment & Order

: 04-08-2011

BEFORE

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

JUDGMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff in her plaint submitted that she had applied to the Revenue Department for a plot of land situated at Chanmari West in the

year 1989. After due verification the plaintiff was allotted a plot of land measuring an area of 302.50 Sq.m. vide House Pass No.539 of 1989 by the competent authority of the Revenue Department. As soon as the plaintiff was allotted the said plot of land vide House Pass No.539 of 1989, she took possession of the said land and constructed a building within the said land in the year 1989 as per the terms and conditions of the said House Pass by spending not less than Rs.1,00,000/-. Thereafter, as applied by the plaintiff Land Settlement Certificate vide No. Azl 394 of 1990 was issued to the plaintiff by conversion from the said House Pass. The plaintiff has been paying tax and other fee in respect of the said land covered under LSC No.Azl.394 of 1990 as and when collected and she has cleared all the taxes dues up to 2001-2002. While plaintiff has been in peaceful and continuous possession of the said land, she received a copy of the letter issued by the ASO-1 addressed to Pu H. Zabiaka, S/r – III vide letter memo no.R.21011/55/92-DC(A)/ Dated Aizawl, the 3rd April '96 stating that Pi.Lalmalsawmi had submitted a letter stating that her land covered under LSC No. 3126 of 1985 is overlapping with the land of the plaintiff covered under LSC No. Azl.394 of 1990 and in the said letter the said Surveyor was directed to make spot verification and report back to him. That after the spot verification was done by the surveyor, the plaintiff did not receive any correspondence from the Revenue department till she received the Show Cause Notice vide No.R.21011/55/92-DC(A)/63-64 : Dated Aizawl, the 29th June 1998 stating that why the LSC should not be cancelled and the building be demolished. After she received the said Show Cause Notice, she submitted a reply stating that she had constructed a building in 1989 and Pi Lalmalsawmi never did anything to show that the land belonged to her, hence she requested the ASO-1 to give alternate site to the said Pi Lalmalsawmi. But the Asst. Settlement Officer – II issued an order vide Memo No. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00 in forming the plaintiff that as per the Govt. letter No.C-18016/192/99-REV dt.24.5.2000 as the House Pass and LSC of Pi Lalmalsawmi is senior in time she shall have the land but the plaintiff shall be provided with alternative land and the cost of the building will be borne by Pi Lalmalsawmi, the plaintiff received an order from the Director, Land Revenue & Settlement, Mizoram: Aizawl. vide Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002. As per the said order the Director stated that for settling these type of disputes they could rely only one letter of the Government which says that the senior pass holder will have the said land and the junior pass holder will have to relinquish her right. In the said order the plaintiff was asked to look for vacant land for transfer. The plaintiff, therefore, prays- (i) that the plaintiff has the right, title and interest in the suit property (ii) that the order/letter Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002 are illegal and null and void (iii) that LSC No.Azl.394 of 1990 is valid (iv) that by way of permanent and mandatory injunction the defendants be restrained from interfering with peaceful possession of the land and building in the LSC No.Azl.394 of 1990 by the plaintiff and also the defendants be restrained from implementing the orders Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002 (v) for setting aside the orders Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002 (vi) for all costs of the suit and (vii) such other relief or reliefs as law, justice, equity and good conscience would allow.

The defendants 1-4 being the state defendants in their written statements submitted that the House Pass No. 539/89 was allotted to the plaintiff but it overlapped LSC No. 3126/85 belonging to defendant no. 5. As senior valid landed pass, they upheld the validity of the LSC No. 3126/85 belonging to defendant no. 5 towards future looking as precedent with a condition that the defendant no. 5 will borne expenditure incurred on construction of building located in the suit land at Rs. 69,500/- to be paid to the plaintiff as assessed by the PWD and further allowed the plaintiff to allot another alternate land at Zemabawk, the plaintiff disagreed of such terms whilst the defendant no. 5 agreed of the same and whilst they found no cause of action, they prayed to dismiss of the suit.

The defendant no. 5 in her written statement submitted that her father namely- Mr. Sawichhinga (L) had purchased a plot of land from Mr. L.N. Tluanga, Ex. MLA who purchased the same from Mrs. Thanhliiri for a sum of Rs. 50,000/-. LSC No. 3126 of 1985 was thereby issued accordingly in favour of the said Mr. Sawichhinga (L). The defendant no. 5 inherited the said property from her late father. The House Pass No. 539 of 1989 issued in favour of the plaintiff overlapped the suit land. Being a senior, there is not grounds to set aside the order passed by the ASO- II, Aizawl District under Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00 which upheld LSC No. 3126 of 1985 and directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5. And also no grounds to set aside Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 which relied in the decisions of the Government under No. C. 18016/192/99- REV Dt. 24.5.2002 upheld LSC No. 3126 of 1985 and further directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD issued by the Director, Land Revenue and Settlement Department, Govt. of Mizoram. No grounds to set aside letter No. C.18016/192/99-REV dt. 24.5.2000 issued by the Govt. of Mizoram which approved the decisions to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD. Thus, prayed to dismiss of the suit.

ISSUES

The following issues were framed on 15/7/2004 as such-

1. Whether the suit is maintainable or not
2. Whether the plaintiff is entitled to the relief claimed or not. If so to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff has produced the following witnesses namely-

1. Smt. Zampuii D/o Rosiama, Chanmari West, Aizawl (Hereinafter referred to as PW-1)
2. Mr. K. Thantluanga VCP, Chandmari West, Aizawl (Hereinafter referred to as PW-2)

The **PW- 1** deposed in her examination in chief reiterated the contents of the plaint being the plaintiff. She further deposed that-

Ext. P-1 is a copy of House Pass No. 539 of 1989
Ext. P-2 is a copy of LSC No. Azl. 394/90 with connected documents
Ext. P-3 is a copy of Non-encumbrance certificate in respect of LSC No. Azl. 394/90
Ext. P-4 is Tax clearance certificate in respect of LSC No. Azl. 394/90
Ext. P-5 is letter detailing Surveyor to conduct spot verification
Ext. P-6 is show cause notice issued by ASO-I
Ext. P-7 is replied letter of show cause notice to the ASO-I
Ext. P-7 (a) is her signature
Ext. P-8 is Order dt. 11.6.2000 issued by ASO- II
Ext. P-9 is Order dt. 28-06-2002 issued by the Director, LR&S
Ext. P-10 is Approval letter of Govt. of India Dt. 24.5.2000
Ext. P-11 is a copy of House Tax Payee Certificate
Ext. P-12 is a copy of Legal Notice

In her cross examination, she deposed that House Pass No. 539 of 1989 was issued on 13.9.1989. In the name of her husband, they had possessed a land adjoining in the suit land as purchased from others but not known the price and from whom they had purchased.

The **PW- 2** in his examination in chief deposed that he was the President of Village Council, Chanmari West during 1987. Being as VCP, he certified that there is not objection to allot the suit land to the plaintiff.

In his cross examination, he admitted that the LSC of the defendant no. 5 is senior than the LSC of the plaintiff.

For the defendant No. 5:

The defendant no. 5 had produced only one witness namely Smt. Lalmalsawmi D/o Sawichhinga (L), Chanmari, Aizawl (Hereinafter referred to as the DW). In her examination in chief, being the defendant no. 5, she merely reiterated the contents of her written statements.

In her cross examination, she deposed that in the year of 1983, she along with her husband went to Manipur and returned to Mizoram in 1990. After that they dwelled at Ramhlun North in the residence of her husband. Her father Sawichhinga was died in Dec., 1992 and also divorced with her husband in 2003. The suit land remains in the name of her late father. During 1989 to 1990 none of her siblings were also at Aizawl as stayed out in other parts of the state and outside Mizoram. She is not exactly known the location of the suit land till 2000. She denied that at the time of construction of building by the plaintiff, she would not be estopped by acquiescence to claim the suit land.

The state defendants failed to adduce their evidence in the proceedings.

POINTS OF RIVALRY

Mr. W. Sam Joseph, learned counsel for the plaintiff after eliciting the averments in the plaint and brief story of the case submitted that all house pass conditioned that building would be constructed within one year from the date of issuance of house pass but the defendant no. 5 fails to comply the same. By making reliance in the case of **1980 AIR (Gauhati) 70 Sailala Versus Ngurtaiveli**, by specifically referring paragraph 10 which speaks that “10. In our view, on the basis of the facts found by the Court below, which we accept, we have no hesitation in coming to the conclusion that the

conduct of late Thangphunga was such that he acquiesced in the ownership of late R. D. Leta in the suit premises. Though various notorious acts were done in the suit premises between the plaintiff and the near relatives of late R. D. Leta, as discussed above, while Thangphunga was -alive, Thangphunga remained stood by. In such a case, the doctrine of estoppel by acquiescence comes into play. The proper sense of the word 'acquiescence' is that if a party having a right stands by and sees- another dealing with the property in a manner inconsistent with that right and takes no objection while the act is in progress, he cannot afterwards complain." He therefore stated that by a doctrine of estoppels on acquiescence, the defendant no. 5 is estopped in the suit land.

Mr. L.H. Lianhrima, learned counsel for the defendants 5 after revealing the averments in the plaint and brief story of the case with delving evidence adduced in the case at hand argued that the plaintiff did not have any locus standi to file the instant suit by making reliance in the decisions of the Hon'ble Gauhati High Court in the case of **Smt. Saiziki Sailo Vs. State of Mizoram & Ors.** in RSA No. 3 of 2002 decided on 18-06-2003 which upheld senior LSC in two LSCs issued in the same plot of land.

The state defendants also betrayed arguments of the proceedings of the case.

FINDINGS

Issue No. 1

Maintainability of the suit

The plaint is property drafted, accompanied by Verification and Affidavit duly signed and sworn by the plaintiff. A requisite court fees is also paid by the plaintiff. Thus, I find no irregularities which can vitiate the proceedings.

Issue No. 10

Entitlement of relief claimed and it's extend

Before discussing the issue, let us again close look the relief sought in the plaint such as-

- (i) that the plaintiff has the right, title and interest in the suit property
- (ii) that the order/letter Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002 are illegal and null and void
- (iii) that LSC No.Azl.394 of 1990 is valid
- (iv) that by way of permanent and mandatory injunction the defendants be restrained from interfering with peaceful possession of the land and building in the LSC No.Azl.394 of 1990 by the plaintiff and also the defendants be restrained from implementing the orders Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002
- (v) for setting aside the orders Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00, order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 and the letter No. C.18016/192/99-REV dt. 24.5.2002
- (vi) for all costs of the suit and (vii) such other relief or reliefs as law, justice, equity and good conscience would allow.

By having a close look of the impugned orders and letter, an order passed by the ASO- II, Aizawl District under Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00 as Ext. P- 8 had upheld LSC No. 3126 of 1985 and directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5.

Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 issued by the Director, Land Revenue and Settlement Department, Govt. of Mizoram as Ext. P- 9 by referring the decisions of the Government under No. C. 18016/192/99- REV Dt. 24.5.2002 which upheld LSC No. 3126 of 1985 directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD

Letter No. C.18016/192/99-REV dt. 24.5.2000 which was issued by the Govt. of Mizoram which approved the decisions to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD.

On meticulously examining evidence adduced during the proceedings, the undisputed facts emerged as-

- (1) The landed documents of the defendant No. 5 under LSC No. 3126 of 1985 is senior that the landed documents of the plaintiff under House Pass No. 539 of 1989 later converted into LSC No. Azl. 394 of 1990.
- (2) The suit land is under same location and similar boundary descriptions
- (3) The defendant no. 5 inherited LSC No. 3126 of 1985 from his late father who sadly deceased in Dec., 1992
- (4) The defendant no. 5 was not in Mizoram during 1983 to 1990

The decisions of Hon'ble Gauhati High Court in **Sailala Vs. Ngurtaiveli** reported in 1980 AIR (Gauhati) 70 dealt a dispute on sale of land and held valid as challenged in the belated stage by calling doctrine of estoppels by acquiescence. The existence, nature and causes of the instant suit is different from the said ratio. For taking into consideration of the judicial precedence, the law is recently well settled in **Narmada Bachao Andolan vs State Of M.P. & Anr.** decided on 11 May, 2011 in connection with Civil Appeal No. 2082 of 2011, the Hon'ble Supreme Court by making reliance in *Municipal Corporation of Delhi v. Gurnam Kaur*, AIR 1989 SC 38; *Govt. of Karnataka & Ors. v. Gowramma & Ors.*, AIR 2008 SC 863; and *State of Haryana & Anr. v. Dharam Singh & Ors.* (2009) 4 SCC 340, has held that-

“59. The Court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact-situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the Court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper.”

In this view, the ratio in **Sailala Vs. Ngurtaiveli (supra.)** is not thereby applicable in the instant case.

On the other hand, in **Smt. Saiziki Sailo Vs. State of Mizoram & Ors.** in RSA No. 3 of 2002 decided on 18-06-2003, one LSC was issued in 1977 and the other was issued in 1992 within the same plot of land, the plaintiff who hold the LSC issued in 1977 did not also make use of the land and was lying vacant. On the basis of the later LSC issued in favour of respondent no. 5, the respondent no. 5 occupied the land and constructed a house, the legality of construction of house in a stipulated period of time in the LSC was also challenged. Wherein, after all discussion, the Hon'ble Gauhati High Court upheld the senior LSC and directed the respondent no. 5 to hand over the vacant possession of the land to the plaintiff within a period of six months. The law which evolved in the instant dispute is already settled by the Hon'ble Gauhati High Court in **Smt. Saiziki Sailo Vs. State of Mizoram & Ors.** (supra.) as rightly relied by Mr. L.H. Lianhrima. Therefore, the decisions and observations of the Govt. of Mizoram and its authorities like (i) an order passed by the ASO- II, Aizawl District under Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00 as Ext. P- 8 had upheld LSC No. 3126 of 1985 and directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5. (ii) Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 issued by the Director, Land Revenue and Settlement Department, Govt. of Mizoram as Ext. P- 9 by referring the decisions of the Government under No. C. 18016/192/99- REV Dt. 24.5.2002 which upheld LSC No. 3126 of 1985 directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD and (iii) Letter No. C.18016/192/99-REV dt. 24.5.2000 which was issued by the Govt. of Mizoram which approved the decisions to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD are justifiable and were within the law aiming to meet justice, good conscience and equity. Pertinently, the assessment of the value of the building/house of the plaintiff constructed in the suit land submitted to the concerned authority by the Executive Engineer, PWD, Aizawl Building Division under No. B-5/N/2002/ Dated Aizawl, the 28th August, 2002 annexed in the written statement of defendants 1-4 are accurate and no diverse findings can be had. I therefore have no choice except to dismiss the suit.

ORDER

The inevitable conclusion is that I uphold the decisions and observations of the Govt. of Mizoram and its authorities such as- (i) an order passed by the ASO- II, Aizawl District under Memo no. R.21011/55/92-DC(A)/109 dated Aizawl, the 19th June '00 as Ext. P- 8 had upheld LSC No. 3126 of 1985 and directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5. (ii) Order Memo No.C.13016/W-4/96-DTE (REV) Dated Aizawl, the 25th June/2002 issued by the Director, Land Revenue and Settlement Department, Govt. of Mizoram as Ext. P- 9 by referring the decisions of the Government under No. C. 18016/192/99- REV Dt. 24.5.2002 which upheld LSC No. 3126 of 1985 directed to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD and (iii) Letter No. C.18016/192/99-REV dt. 24.5.2000 which was issued by the Govt. of Mizoram which approved the decisions to allot other alternate land to the plaintiff with giving costs of building of the plaintiff by the defendant no. 5 as per the schedule rate of the PWD.

Howsoever, as per the ratio laid by the Hon'ble Gauhati High Court in **Smt. Saiziki Sailo Vs. State of Mizoram & Ors.** (supra.), the defendant no.

5 is directed to make payment of the value of the house constructed in the suit land at Rs. 69,500/- (sixty nine thousand and five hundred rupees) to the plaintiff within a period of six months, the plaintiff shall thereby hand over the suit land and house/building therein to the defendant no. 5 with her peaceful possession within a period of six months whether she refused to receive Rs. 69,500/- (sixty nine thousand and five hundred rupees) or not.

In the afore-mentioned terms and conditions, the suit is dismissed as lack of merits.

No order as to costs of the suit.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Given under my hand and seal of this court on this 4th August, 2011 Anno Domini within the premises and during the working hours of this court and is pronounced in an open court.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. TS/11/2002, Sr. CJ (A)/

Dated Aizawl, the 4th August, 2011

Copy to:

1. Smt. Zampuii D/o Rosiama, Chanmari West, Aizawl through Mr. W. Sam Joseph, Advocate
2. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer- I, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
6. Smt. Lalmalsawmi D/o Sawichhinga (L), Ramhlun North – Aizawl through Mr. L.H. Lianhrima, Advocate
7. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
8. Case record

PESKAR