

IN THE COURT OF SENIOR CIVIL JUDGE- 1 AIZAWL DISTRICT: AIZAWL, MIZORAM

TITLE SUIT NO. 02 OF 1986

Plaintiff:

Mr. Lalrinawma Sailo
S/o Thanga (L)
Vaivakawn, Aizawl

By Advocate's

: Mr. W. Sam Joseph, Adv.

Versus

Defendants:

1. The Chief Secretary to the
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Revenue Department
3. The Deputy Commissioner
Aizawl District: Aizawl
4. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
5. Assistant Settlement Officer- II
Aizawl District, Aizawl
Land Revenue and Settlement Department
Govt. of Mizoram
6. Mr. R. Zachhinga
Vaivakawn, Aizawl

By Advocates

For the defendants 1-5

:

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

Date of arguments

: 09-12-2011

Date of Judgment & Order

: 12-12-2011

BEFORE

Dr. H.T.C. LALRINCHHANA, Sr. CJ- 1

JUDGEMENT & ORDER

GENESIS OF THE CASE

The plaintiff in his plaint submitted that in the year 1983, the plaintiff was given an allotment of land by the defendants vide LSC No.Azl.1261 of 1983 covering half bigha of Land and the Revenue is assessed Rs.5/-(five) per annum and the plaintiff had acquired the status of Settlement holder under Mizo District (Land & Revenue) Act,1956 with the legal ownership of the land including all rights and interest over the land. The plaintiff have improved the house site allotted to him and was regularly paying all taxes due to the Government and was never a defaulter, and has never violated any of the conditions as mentioned in the terms and conditions of the settlement rules. While the plaintiff was peaceful possession of the above land, the plaintiff received a letter No.DST. 8/4-4/84/85/103 Dt. Aizawl, the 21st August 1985 issued by the defendant No.6 as to the fact of showing cause as to why his house site was not to be cancelled and the plaintiff was to answer within 5 days. The defendant Nos.5 and 6 in order to compensate the lose incurred due to landslide of the land of Sh. Zachhinga of Vaivakawn adjacent to the land of the plaintiff has asked the plaintiff to show cause as to the cancellation of his pass with an intention to allot the plaintiff's land to the defendant no.7. The defendant no.5 & 6 vide their order no.DST.8/4-4/84/85/Pt. VIII/25 dt. Aizawl 30th Oct., 1985 cancelled the house site LSC No. 1261/83 issued in the plaintiff's name and asked the defendant no.7 Sh. Zachhinga to include in his LSC with the area of the plaintiff's land and the plaintiff was asked by both the defendant no.5 & 6 to look for suitable alternative site for transfer of his LSC. The plaintiff therefore prays that (i) the order of the defendant no.5&6 regarding the cancellation of LSC No.1261/83 is illegal (ii) the plaintiff be put in peaceful possession by restoring right, title and interest over LSC No.1261/83 (iii) to make payment of the compensation amounting to Rs.10,00,000/-(Rupees ten lakhs) for the total area of land covered by LSC No.1261/83 (iv) such order and further order by way of relief to the plaintiff from time to time.

The defendants in their written statements contended that while the plaintiff fails to develop the suit land and as Mr. Zachhinga, who have had a land adjoining to the land of the plaintiff met severe landslide, the land of the plaintiff was planned and utilized for compensation as alternative site for the said Mr. Zachhinga. More so, crops and plants were cultivated in the suit land by the said Mr. Zachhinga and LSC No.1261/83 was issued without obtaining No-Objection Certificate from the neighbouring land holders. Thus, prayed to dismiss of the suit.

ISSUES

Upon hearing of both parties and on perusal of pleadings, the issues were framed on 14-07-2010 and slightly amended towards correct findings such as-

1. Whether the suit is maintainable or not

2. Whether the surveyor's verification report dt.14.11.84 and Order No. DST. 8/w-4/84/85 dt.18.3.85, Order No. DST. 8/w-4/84/85 dt.1.4.85 are legally valid?
3. Whether the House Site Pass No.10 of 1981 which was converted into LSC No.1261/83 without obtaining No- objection Certificate from the defendant No.7 is valid? If not whether the LSC No.1261/83 is liable to be cancelled as per law?
4. Whether the plaintiff is entitled to the relief claimed, if so, to what extend?

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Lalrinawma Sailo S/o Thanga (L), Republic Vengthlang, Aizawl (Hereinafter referred to as PW-1)
2. Mr. R. Zatawna S/o Lalvuana (L), Kanan Veng, Aizawl (Hereinafter referred to as PW-2)
3. Smt. Saithuampuii Sailo W/o Lalrinawma Sailo, Republic Vengthlang, Aizawl (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief after reiterating his plaint deposed that –

Ext. P-1 is copy of letter dt.29.4.85 sent to Chief Minister by the plaintiff.

Ext. P-2 is copy of letter dt.24.3.86 sent to the Director, LR & S Deptt., Mizoram by the plaintiff.

Ext. P-3 is a copy of letter sent to R. Zachhinga of Vaivakawn sent by Asst Director, LR & S Deptt. vide Memo No.DLR/HP-15/83/140 dt.23.3.83.

Ext. P-4 is a copy of letter sent to R. Zachhinga of Vaivakawn by Asst Director, LR & S Deptt. (Mizo version).

Ext. P-5 is a copy of letter sent to R .Zachhinga of vaivakawn by the Director, LR & S Deptt vide Memo No.DLR/HP-15/82/112 dt.20.01.83.

Ext. P-6 is a copy of order dt.01.04.85 issued by the ASO-II, LR & S, Aizawl vide Memo No.DST.8/w-4/84/85 dt, 01.04.84.

Ext. P-7 is a copy of order dt.30.10.85 issued by the ASO-I vide Memo No. DST. 8/W-4/85/Pt. VIII/25 dt.30.10.85.

Ext. P-8 is a copy of LSC No.Azl-1261 of 1983 issued in the name of the plaintiff containing payment of tax and tax clearance receipt.

Ext. P-9 is a copy of compromised letter dt.2.8.91 duly signed by the plaintiff.

Ext. P-10 is a copy of show cause notice dt.21.8.85 sent to the by ASO-I, LR & S Deptt. Aizawl.

In his cross examination, he admitted that he could not produce the original copy of LSC No.1261/83 as fire was broke out in the Deputy Commissioner's Office, Aizawl on 29.11.1994 which destroyed his original LSC No.1261/83. He also admitted that before cancellation of his LSC, he did not construct a house in the suit land. He did not ascertain that

whether he had obtained NOC from Mr. R. Zachhinga when filing application for issuance of his LSC. So far as his knowledge concerned, the suit land is occupied by the defendant no. 6.

In his re-examination, he further deposed that after disposal of the suit on 10.6.1993, as per the order of the then ADM (J) being appellate court dt. 12.8.1997 in Civil Appeal No. 3/93, de novo trial of the instant case is being done.

The **PW-2** in his examination in chief deposed that at the time of issuance of LSC No.1261/83 to the plaintiff, he was the Secretary of the Village Council, Vaivakawn having jurisdiction over to the suit land. He witnessed the allotment of land to the plaintiff under LSC No.1261/83. Due to illegal and favourite act of the Revenue Authorities, the LSC No.1261/83 of the plaintiff was cancelled by allotting the same to the defendant no. 6. With an intention to compensate landslide met by the defendant no. 6, the land of the plaintiff was allotted to the defendant no. 6.

In his cross examination, he deposed that he did not know whether another land was allotted to the plaintiff by the Revenue authorities or not.

The **PW-3** in her examination in chief deposed that the plaintiff was allotted a land under LSC No.1261/83 and was cancelled by the Revenue authorities. During 1983-1985, he was working as LDC in the office of Director, Land Revenue and Settlement Department when Mr. Raltawna, IAS was the Director, being in charge of receive and issuance of letters in connection with office transactions and perused the instant dispute dealing in the department, she found that due to illegal and favourite act of the Revenue Authorities, the LSC No.1261/83 of the plaintiff was cancelled by allotting the same to the defendant no. 6. With an intention to compensate landslide met by the defendant no. 6, the land of the plaintiff was allotted to the defendant no. 6.

In her cross examination, she stated that at the time of issuance of LSC No.1261/83, the defendant no. 6 refused to sign No Objection Certificate for them.

For the defendants:

The defendants had produced only one witness namely- Mr. K. Lalhmuakliana, Asst. Director, Land Revenue and Settlement Department, Govt. of Mizoram (Hereinafter referred to as the DW). In his examination in chief, he deposed that the plaintiff was allotted a land under House Pass No. 10 of 1981 within the Kitchen Garden of Mr. R. Zachhinga defendant no. 6 without obtaining NOC from the defendant no. 6. Again the said House Pass was converted into LSC No.1261/83 without obtaining NOC from the defendant no. 6. The suit land was duly verified by the Surveyor Mr. Lalbeiseia and his report dt. 14.10.84 showed that the land was not developed by the plaintiff. Thus, the then Revenue Director made an order for inclusion of the suit land into the land of the defendant no. 6. The LSC No.1261/83 was thereby cancelled. He further deposed that-

Ext. D-1 is written statement

Ext. D-1 (a) is the signature of Mr. H. Lalengmawia, the then Under Secy. Revenue Department

Ext. D-2 is the verification report of Surveyor Mr. Lalbeiseia

Ext. D-3 is the order dt. 18.3.85 by ASO-II

Ext. D-4 is the order of ASO-II

Ext. D-5 is the letter of Dy. Secy. Revenue Department

Ext. D-6 is the letter of Director, LR&S Department

Ext. D-7 is the letter of Under Secy. Revenue Department

Ext. D-8 is the show cause notice

Ext. D-9 is the court order dt. 16.6.1993.

In his cross examination, he deposed that he admitted that the House Pass of the plaintiff was converted in LSC No.1261/83 within a period of two years. In the show cause notice, no offer for alternate site for the plaintiff was made. As per Ext. D- 2, the area of LSC No.1261/83 was not covered by the landed property of the defendant no. 6. He admitted that House Pass No. 10 of 1981 was issued by the competent authority in favour of the plaintiff and again converted into LSC No.1261/83 by the competent authority. As per revenue records, the land under LSC No.1261/83 was not covered by the area covered by LSC No. 1261/83 belonging to the defendant no. 6. He also admitted that till 14.11.1984, the defendant no. 6 did not apply for extension of his LSC used as Kitchen garden. As indicates as vacant land by Revenue records, House pass and later LSC No.1261/83 was issued in favour of the plaintiff.

ARGUMENTS

Mr. W. Sam Joseph, learned counsel for the plaintiff argued that From the evidence on record it is clear that the land allotted to the plaintiff was not covered by the LSC belonging to R.Zachhinga.(Defendant no.6). The 1st issue was already decided by the court in the favour of the plaintiff when the plaintiff was permitted to adduce evidence. The 2nd issue should be taken up last. The 3rd issue relates to the surveyor's report and the order of the Assistant Settlement Officer - II, LR and Settlement, Mizoram dated 18th March 1985 and as per the said report of the surveyor it is clear that that land of the plaintiff does not overlap with the land of the defendant no.6. The said order was not passed in conformity with the surveyor's report. It appears from the surveyor's report that there is a practical problem at the site allotted to the plaintiff due to the land slide. He should be given alternate site but though it was admitted that the plaintiff would be given alternate site, the Department directed the plaintiff to look for a plot of land, but it is not possible for a private individual to pin point any vacant land of similar size and similar value. Only the defendants nos. 1 to 5 would know where the land is lying vacant and which land can be allotted to the plaintiff. Though order has been made that alternate site be allotted in paper, practically the department did not take any effort to allot alternate site of similar value to the plaintiff. The order passed by the ASO - II dated 18.3.1985 seems to be not a proper order and the same is to be set aside. As the suit was filed way back in the year 1986, the valuation of the suit

was valued very less. As the case is pending for more than 25 years, if any compensation is to be paid by the Revenue department it should be adequate compensation as per the present market value. Since the House pass and LSC issued in favour of the plaintiff was properly issued in conformity with the Land and Revenue Act and Rules applicable to Mizoram, if the plaintiff is to be deprived of the land it should be done by the authority of the law. The defendants admitted that the plaintiff should be given alternate site. It is very clear that the cancellation of the said LSC belonging to the plaintiff was an illegal act. Mr. W. Sam Joseph therefore prayed to decree that the cancellation orders passed by the defendants nos.1 to 5 are illegal and be set aside. Let a direction be issued to allow the plaintiff to take actual possession of the land covered under LSC No.1261 of 1983. In the event of the defendants unable to give the actual possession let a decree be passed directing the defendants nos. 1 to 5 provide with alternate site with similar value and if not possible, the compensation be assessed so as to give the present market value of the land calculated in conformity with the laws in force in Mizoram.

On the other hand, Mr. R. Lalremruata, learned AGA for the defendants contended that from the plaint, written statement, depositions of witnesses and materials available on records, it is clear:-

- (a) That, 'No objection Certificate' was not obtained by the plaintiff from the defendant No. 6. In fact, the plaintiff witness No. 3 (i.e. the plaintiff's wife) on cross-examination admitted that the same was not obtained from the defendant number 6.
- (a) That, due to landslide on the land of the defendant No. 6 and due to the non-development of land by the plaintiff, the L.S.C. No. 1261/83 was cancelled after giving the plaintiff an opportunity of being heard.
- (b) That the plaintiff was offered an alternative site elsewhere upon his submission of his LSC of which the plaintiff failed to do so.
- (c) That there is no question of payment of Rs. 10,00,000.00 to the plaintiff as the same may not be claimed under Title Suit. Moreover the plaintiff failed to pay adequate court fees for claiming such amount of money. It is further submitted that no legal notice was served to the defendants for the same.

Thus, she earnestly prayed to dismiss the instant suit with cost

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

The suit was filed in 1986 when separation of judiciary from executive was not implemented and only the spirit of the Code of Civil Procedure, 1908 governed the proceedings. As deposed by PW-1, plaintiff was simply directed to submit his LSC for necessary transfer etc. With that direction, the case was disposed of by the then SDO (S), Aizawl District namely – Mr. Tlanglianruma on 10.06.1993. It was again set aside and directed to trial de novo by the then ADM (J), Aizawl District in connection with Civil Appeal

No. 3 of 1993 dt. 12.8.1997. Meanwhile, as deposed by the PW-1 in his cross examination, fire broke in the then court of Deputy Commissioner, Aizawl dt. 29.11.1994 destroyed the instant case record and is in a re-construct form. The plaint with verifications and serving prior legal notice to the defendants will be maintainable towards justice, equity and good conscience.

Issue No. 2

Whether the surveyor's verification report dt.14.11.84 and Order No. DST. 8/w-4/84/85 dt.18.3.85, Order No. DST. 8/w-4/84/85 dt.1.4.85 are legally valid?

The verification report dt. 14.11.1984 alone is nothing which speaks the findings of the concerned Surveyor about the suit land which is marked as Ext. D-2 which speaks that although the defendant no. 6 developed the suit land by planting crops etc., he blenched to obtain pass/LSC in the suit land. The heavy landslide occurred during 1983 destroyed the land of the defendant no. 6 and shifted to Govt. complex by the Government. During that time, the plaintiff was alleged to obtain House Pass in the suit land. The said Surveyor concluded to transfer the land of the plaintiff by allotting the suit land to the defendant no. 6. It is mere his own findings and suggestions.

Meanwhile, on the basis of the spot verification of the suit land, the impugned Order No. DST. 8/w-4/84/85 dt.18.3.85 marked as Ext. D- 3 is passed by the ASO-II with the approval of the Director of Land Revenue and Settlement Department dt. 13.3.1985. it reads that – the land of the plaintiff under LSC No.1261/83 is well developed by the defendant no. 6 also having matured crops or plantations while the plaintiff did not develop the suit land plus due to affected the defendant no. 6 by heavy landslide. The land under LSC No.1261/83 is allotted to the defendant no. 6 for the purpose of housing. The subsequent Order No. DST 8/w-4/84/85 dt.1.4.85 marked as Ext. D- 4 further cancelled the said LSC No.1261/83 by inclusion of the area covered therein to the landed property of the defendant no. 6. Pertinently, the entity of Land Settlement Certificate is well settled in the case of **Chalthiangi vs. State Of Mizoram And Ors.** decided on 28 June, 2007 and reported in 2007 (4) GLT 166, the Hon'ble Gauhati High Court has held that-

“13. That, a conjoint reading of the above definitions demonstrate that the land allotted under "Pass" is a temporary in nature, a pass-holder has only temporary right of use over the land for a specific period mentioned in the 'Pass' without having any right to transfer or of inheritance or of subletting. Whereas a Settlement-holder has every right, title, interest including the heritable and transferable rights by virtue of the LSC until and unless the settlement is cancelled for violation of terms and conditions of settlement. It is clear that decides other mode of settlement land can be settled either permanently or temporarily with any individual or society etc, under the relevant land laws of the State of Mizoram. In the case at hand,

it has been proved that the suit land was settled permanently with the plaintiff under LSC No. 57/1988, marked Exbt. P-1 and thus, the plaintiff- appellant has definitely better right and title than any other 'Pass-holder' in respect of the suit land.”

In the Appendix A of the Mizo District (Land and Revenue) Rules, 1967, the forms of Land Settlement Certificate is set forth and issued the instant LSC No.1261/83 as clearly elicited by Ext. P- 8. In the back page of Ext. P-8, there was terms and conditions of settlement under 9 paragraphs which appears imposed under section 7 of the Mizo District (Land and Revenue) Act, 1956, no where in that terms and conditions insisted to develop the land covered by LSC and failing on which will entail cancellation of the said LSC.

However, as argued by Mr. W. Sam Joseph, right to property remains under the entity of Article 300 A of the Constitution of India. It denotes that without due process of law, none have power to deprive the right to property of a person/s as well settled 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.”

Furthermore, the Supreme Court in **State of W. B. & Others v. Vishnunarayan Associates (P) Ltd & Another** (2002) 4 SCC 134, while examining the provisions of the West Bengal Great Eastern Hotel (Acquisition of Undertaking) Act, 1980, held in the context of Article 300A that the State or executive offices cannot interfere with the right of others unless they can point out the specific provisions of law which authorises their rights. At this era, more recognition is paid 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 Supreme Court has held that-

“26. This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide: Lachhman Dass v. Jagat Ram & Ors., (2007) 10 SCC 448; and Amarjit Singh & Ors. v. State of Punjab & Ors. (2010) 10 SC 43).”

And in **State Of Haryana vs Mukesh Kumar & Ors.** decided on 30 September, 2011 in connection with Appeal (Civil) No. 28034/2011 (Arising out of CC 9038/2010), the Supreme Court has held that-

“36. The right to property is now considered to be not only constitutional or statutory right but also a human right. Human rights have already been considered in realm of individual rights such as right to health, right to livelihood, right to shelter and employment etc. But now human rights are gaining a multi faceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context.”

Solely for the purpose allotting the land for the victims of landslide and due to failure to develop the land, the instant LSC No.1261/83 was cancelled by the Government of Mizoram as elicited by Ext. D-3 and 4. If the defendant no. 6 who was allotted the land of the plaintiff might be developed the suit land, it was a kind of trespass and intrusion in others rights. Thus, the impugned Order No. DST. 8/w-4/84/85 dt.18.3.85 marked as Ext. D- 3 and Order No. DST 8/w-4/84/85 dt.1.4.85 marked as Ext. D- 4 were not tenable and is arbitrary and capricious liable to set aside.

Issue No. 3

Whether the House Site Pass No.10 of 1981 which was converted into LSC No.1261/83 without obtaining No- objection Certificate from the defendant No.7 is valid? If not whether the LSC No.1261/83 is liable to be cancelled as per law?

No where in the land laws viz. Mizo District (Land and Revenue) Act, 1956 and the rules made thereunder where issuance of LSC No.1261/83 mandate to obtain No-Objection Certificate for issuance of Land Settlement Certificate which appears insisted as practice for the purpose of determining freeing from emcumbrance under rule 6 of the Mizo District (Land and Revenue) Rules, 1967. If one may apply LSC without no-objection certificate, being the Department of Land Revenue and Settlement, the defendants 1-5 are liable to scrutinize, examine and settle the crux before issuance of LSC. In the case at hand, House Pass No. 10 of 1981 was issued in favour of the plaintiff and thereafter converted the same into LSC No.1261/83. It is therefore immaterial to adjudicate the disputes against the plaintiff due to lack of no-objection certificate from the defendant no. 6 whilst it is the sole duty and task of the defendants 1-5 to perform settlement of such lacunae.

Issue No. 4

Whether the plaintiff is entitled to the relief claimed, if so, to what extend?

As discussed above, instead of directing to pay monetary compensation or alternate land in favour of the plaintiff. The impugned Order No. DST. 8/w-4/84/85 dt.18.3.85 marked as Ext. D- 3 and Order No. DST 8/w-4/84/85 dt.1.4.85 marked as Ext. D- 4 and their connected correspondences with subsidiary proceedings in the aegis of the defendants 1-5 are liable to set aside by upholding the LSC No.1261/83 belonging to the plaintiff in the suit land with peaceful possession of the plaintiff.

ORDER

In view of the findings in various issues and UPON hearing of both parties, it is hereby ORDERED that the impugned Order No. DST. 8/w-4/84/85 dt.18.3.85 marked as Ext. D- 3 and Order No. DST 8/w-4/84/85 dt.1.4.85 marked as Ext. D- 4 and their connected correspondences with subsidiary proceedings in the aegis of the defendants 1-5 are hereby set aside by upholding the entity of LSC No.1261/83 belonging to the plaintiff in the suit land with peaceful possession of the plaintiff. The defendants 1-6 are directed not to disturb the plaintiff from the peaceful possession of the area covered by LSC No.1261/83 henceforth. If apply, the defendants 1-5 are directed to issue afresh LSC No.1261/83 in favour of the plaintiff as the then court building was fired during 1994 which destroyed the original copy of LSC No.1261/83 while pending the suit. The defendant no. 6 is also directed to vacate the suit land within a period of one month from the date of this order by leaving possession to the plaintiff.

Parties shall bear their own cost.

The case shall stand disposed of

Give this copy to all concerned.

Given under my hand and seal of this court on this 12th Dec., 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- 1

Aizawl District: Aizawl

Memo No. TS/2/1986, Sr. CJ (A)/

Dated Aizawl, the 12th Dec., 2011

Copy to:

1. Mr. Lalrinawma Sailo S/o Thanga (L), Vaivakawn, Aizawl through Mr. W. Sam Joseph, Adv.
2. The Chief Secretary to the Govt. of Mizoram C/o Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA
4. The Deputy Commissioner, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA

6. Assistant Settlement Officer- II, Aizawl District, Aizawl, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. Mr. R. Zachhinga, Vaivakawn, Aizawl through Mr. W. Sam Joseph, Adv.
8. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
9. Case record

PESKAR