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

TITLE SUIT NO. 23 OF 2003

Plaintiff:

Mr. Siamphunga
S/o Chuauzinga (L)
Luangmual, 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 Inspector General of Prisons
   Govt. of Mizoram
   Jail Veng, Aizawl

3. The Secretary to the Govt. of Mizoram
   Prisons Department

4. The Secretary to the Govt. of Mizoram
   Land Revenue and Settlement Department

5. The Director
   Land Revenue and Settlement Department
   Govt. of Mizoram

6. The Deputy Commissioner i/c Revenue
   Aizawl District: Aizawl

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

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

Date of Arguments : 05-12-2011
Date of Judgment & Order : 07-12-2011

JUDGMENT & ORDER

GERMINATION OF THE CASE

The plaintiff had submitted in his plaint that on 28.11.1973 the plaintiff was allotted a plot of land by the then President of the Village Council of Luangmual Village by virtue of the power conferred to him as per the provisions of S.3. 1) of the Lushai Hills District (House Sites) Act, 1953. The location of the land runs as follows:- "*Luangmual ram leimak kawng thlang chhak lam ah Sawma rin chhin lama Arthla dawn lui thlang lamah kawrte ah chho a leimak kawng thleng*". Presently the land can be identified as the land below the Central Jail. Soon after the said land was allotted to the plaintiff by the said Village Council, he had constructed a house and started living within the said land. The plaintiff has been looking after the said land dearly ever since the said land as allotted to the plaintiff. Later in the year 1993, the plaintiff with the intention to convert the said VC Pass into Land Settlement Certificate had approached the Revenue authorities. The officers and staff of the Revenue department informed the plaintiff that he entire land cannot be converted into LSC without first converting into regular House Pass. Accordingly the plaintiff applied to the concerned Revenue authorities for converting the said land covered under VC Pass into regular House Pass. The revenue authorities informed the plaintiff that it would not be possible to put the entire land into one pass and directed the plaintiff to give names of persons in whose names the passes are to be issued. Accordingly, the plaintiff gave names of his relatives and requested the Revenue authorities to issue the pass in their names. After following all the formalities required for converting the VC Pass into regular House Pass, the Assistant Settlement officer – 1, Land Revenue and Settlement, Mizoram, Aizawl had divided the entire land into 12 (twelve) plots and issued the following passes in the names given by the plaintiff. The details of the passes are as follows:-

Sl. No.	Plot No.	H. Pass No.	Area	Name of the person
1.	1.	349 of 1995	900 Sq.m	Lalrinliana Colney.
2.	2.	102 of 1996	1200 ”	Siamphunga.
3.	3.	103 of 1996	1000 ”	Thanseii
4.	4.	353 of 1995	750 ”	Laldinpuii
5.	5.	104 of 1996	760 ”	Vanlalhruaia
6.	6.	352 of 1995	975 ”	Lalbiakmawia
7.	7.	105 of 1976	760 ”	Lalrintluanga
8.	8.	351 of 1995	1328 ”	Lalengmawii
9.	9.	350 of 1995	990 ”	Lalhmingmawii
10.	10.	101 of 1996	514 ”	Lalnuntluangi
11.	11.	354 of 1995	1065 ”	Lalhruaia
12.	12.	106 of 1996	1212 ”	Lalrammawia.

Before converting the said V.C. Pass into house passes mentioned above the then Assistant Settlement Officer – II had written to the Government of Mizoram for approval vide Letter Memo No. T-17017/10/CON/94-DTE (REV)/4 (A) : Dt. Aizawl, the 10th May /94 and the passes were issued after obtaining the approval from the Govt. of Mizoram. This can be seen from the Order no. LRR/Con -1/83/208 Dated 16.5.95. The copy of the Govt. Order was not given to the plaintiff whereas the copy of the letter sent by the ASO-II to the Government was given to the plaintiff. For preparing the said House Passes the Revenue department had collected fee at the rate of Rs.130/- per pass. As the plaintiff did not have enough money, he paid the fee on two occasions and collected the passes. (i.e. on 6.9.1995 he paid Rs.780/- and collected 6 (six) passes and on 10.4.1996 he paid another Rs.780/- and collected the remaining 6 (six) passes). The plaintiff and his relatives in whose names he had gifted the passes started clearing the land with the intention to construct the houses. But the representatives of the Inspector General of Prisons did not allow the plaintiff and his relatives to construct any structure within the said plots of lands. Further, during the last month the I.G. Prisons and his men started construction of water tank and pipe line and a building within the lands covered under the passes 350/95, 351/95, 101/96 & 104/96. Immediately, the plaintiff's relatives requested the I.G. Prisons not to make any encroachment within the said land and requested the Revenue department to take necessary action to prevent the defendant no.2 from continuing with the construction of the water tank etc. Without giving any heed to the request made by the relatives of the plaintiff the defendant no.2 continued with the said construction and completed the same during the end of February 1997. The Assistant Director, Revenue had issued an order directing the Surveyor Pu R. Zarzoliana to conduct spot verification vide his order memo no. W-9/95 – DTE (REV) 48 : Dated Aizawl, the 12th Mar/97. Thereafter on 8.7.1996 the plaintiff and his relatives submitted applications for converting the said House Passes into Land Settlement Certificates in separate prescribed forms to the then Director, LR & S. Govt. of Mizoram. The Director in turn directed the Head Surveyor to detail Mr. P. Thangzuala, Surveyor to make the demarcation and verification. But till date Land Settlement Certificates were not issued as prayed for. The plaintiff and his relatives could not construct houses within the said lands due to the obstruction caused by the defendant no.2 and his men. The plaintiff and his relatives have cleared all the taxes for the period up to the time it was collected. The plaintiff and his relatives have no dues to the Government in respect of the lands mentioned above. The defendant no.2 or any other officer/officers or staff of the prison department have no right to interfere with the peaceful possession of the landed properties mentioned above belonging to the plaintiff and his relatives. Further, the defendant no.2 and the Jail authorities had also buried dead bodies of persons within the plaintiff's land despite the request made by him to the Jail authorities not to do so. The plaintiff therefore prays that - (i) Let a decree be passed declaring that the Pass issued by the Village council in favour of the plaintiff was valid and the conversion of the said Village Council Passes in to 12 House Passes by the Revenue department was legal and correct and the said 12 House Passes are entitled to be converted in to Land Settlement Certificates. (ii) Let a decree be passed directing the defendants 4, 5 & 6 to convert the House

Passes mentioned in the paragraph 4 into Land Settlement Certificates. (iii) Let a decree be passed declaring that the plaintiff and his relatives in whose favour the House Passes have been issued have right, title over the land and the defendants nos. 2 and 3 be directed to remove all the structures, pipe lines and the bodies buried from the land. (iv) By way of Mandatory and permanent injunction the defendants especially the defendants nos. 2 and 3 be restrained from interfering with the peaceful possession of the land by the plaintiff and his relatives in whose favour the house passes have been issued by the Revenue department. (v) Let a decree be passed directing the defendants nos. 2 and 3 to pay compensation of Rs.1,00,000/- for damaging the lands of the plaintiff's relatives. (vi) Let the cost of the suit be decreed in favour of the plaintiff against the defendants. (vii) Let a decree be passed for any other relief to which the plaintiff and his relatives are entitled according to justice, equity and good conscience. A requisite court fees at Rs. 5000/- is also paid by the plaintiff.

On the other hand the written statement was submitted on behalf of the defendant no.1 to 3. The defendant denied the averment made in the plaint and submitted that the suit is barred by limitation and doctrine of estoppel and acquiescence and stated that as per the Executive (Rev) Order No.28 of 1971 vide Memo No.REC.1/712206/15 dated 23rd Dec.1971, all the lands within the jurisdiction of the Village Councils of Luangmual, Tanhril and Sakawrtuichhun have been declared to be a 'Protected Area' under Section 3(1) of the Lushai Hills District (House sites) Act, 1953. Hence 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. As such V.C. Pass dated 25.11.1973 is invalid and void ab-initio. On the other hand, the answering defendant has been duly allotted and issued a land pass No. DLP. 85 of 1977 for Central Jail, Aizawl by the competent authority. As the pass allegedly issued by the Village Council, Luangmual is invalid and illegal under the provisions of law. Hence, the subsequent conversion of the said invalid pass in to House Pass or LSC are also invalid and illegal on the grounds aforementioned. Moreover, the answering defendant has already been allotted the suit land for the purpose of location of Central Jail in the year 1971 Vide Pass No. DPL 85 of 1977 by the competent authority. The invalid pass of the plaintiff had been illegally divided and converted into house passes against the Revenue Laws and that too without observing codal formalities by the issuing authorities. In fact, the defaulting official in issuing such passes overlapping the pass No.DLP 85 of 1977 of the answering defendant should be made liable for all the consequences. The defendants no.1 to 3 therefore prayed to dismiss the suit with exemplary costs.

The other defendants did not contest in the instant suit as they failed to file written statements.

ISSUES

Issues were framed on 6/3/2007 but amended towards correct findings as follows-

1. Whether the suit is maintainable or not.

2. Whether the plaintiffs have cause of action against the defendants

3. Whether the plaintiffs have locus standi to file the instant suit

4. Whether the suit is bad for non-joinder of necessary parties

5. Whether the suit is barred by the principle of limitation, doctrine of estoppel and acquiescence

6. Whether non-conversion of the Passes of the plaintiff into LSC is bad in law while passes of other allottees are already converted into LSCs.

7. Whether the passes of the plaintiffs overlaping the Pass No. DPL 65 of 1977 belonging to the defendant No.1-3 or not. If so, whose land passes will be survived/precedence.

8. Whether the plaintiff is entitled to the relief claimed by him. If so to what extend and who is/are liable

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses, namely-

1. Mr. Siamphunga S/o Chauzinga (L), Luangmual- Aizawl (Hereinafter referred to as PW-1)
2. Mr. Laichhunga, Chawlhhmun, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Chalngura S/o Sahuma (L), Zonuam, Aizawl (Hereinafter referred to as PW-3)
4. Mr. Hrangchhinga S/o Bama (L), Chawlhhmun, Aizawl (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief reiterated facts mentioned in the plaint being the plaintiff. He further deposed that-

Ext.P-1 is Ram Pekna lekha of the village Council Luangmual (Objected by learned AGA)

Ext. P-2 is House Pass No.349 of Lalrinliana Colney.

Ext. P-3 is House Pass No. 102 of 1996. It is his name.

Ext. P-4 is House Pass No.103 of 1996. It is in the name of Thanseii

Ext. P-5 is House Pass No. 353 of 1995. It is in the name of Laldinpuii.

Ext. P-6 is House Pass No.104 of 1996. It is House Pass No.104 of 1996. It is in the name of Vanlalhruaia.

Ext. P-7 is House No. 352 of 1995. It is in the name of Lalbiakmawia.

Ext. P-8 is the House Pass No.105 of 1996. It is in the name of Lalrintluanga.

Ext. P-9 is House Pass No.351 of 1995. It is the name of Lalengmawii.

Ext. P-10 is House Pass No.350 of 1995. It is in the name of Lalhmingmawia.

Ext.P-11 is House Pass No. 101 of 1996. It is the name of Lalnuntluanga.

Ext.P-12 is House Pass No.354 of 1995. It is the name of Lalhruaia.

Ext.P-13 is House Pass No.106 of 1996. It is yhe name of Lalrammawia.

Ext.P-14 is a letter Memo No.-T.17o17/10/CON/94-DTE (REV)/4 Dt.Aiawl, 10th May/94 sent by ASO-II for Director, Land Revenue & Settlement to the Deputy Secretary, Govt. of Mizoram, Revenue Deptt.

Ext.P-15 is Chhiahpekna Receipt Dt.6.9.1995.

Ext.P-16-16 is Chhiahpekna Receipt Dt. 10.04.1996(Objected by AGA).

Ext.P-18 is order memo no. W-9/95-DTE(REV)48 Dt.Aizawl, hthe 12th Mar'97 passed by the Asst. Director for Director, LR & S.

Ext.P-19 is "Inhmun Ram LSC tura dilna"in the name of the plaintiff

Ext.P-20 is "Inhmun Ram LSC tura Dilna" in the name of Lalrintluanga.

Ext.P-21 is "Inhmun Ram LSC tura Dilna" in the name of Lalrinliana Colney.

Ext.p-23 is "Inhmun Ram LSC tura Dilna" in the name of Precilla L. Remmawii.

Ext.24 is " Inhmun Ram LSC tura Dilna' in the name of Rebecca L. Hmingmawii.

Ext. P-25 is "Inhmun Ram LSC tura Dilna" in the name of Lalrammawia.

Ext.P-26 is " Inhmun/Ram LSC tura Dilna" in the name of Laldingpuii.

Ext.P-27 is "Inhmun/Ram LSC tura Dilna" in the name of Ricky L. Biakmawia.

Ext.P-28 is "Inhmun/Ram LSC tura Dilna in the name of Amy Lalengmawii.

Ext.P-29 is "Inhmun/Ram LSC tura Dilna: in the name of Vanlalhruaia.

Ext.P-30 is "Inhmun/Ram LSC tura Dilna" in the name of Lalnuntluangi.

Ext.P-31 is Notice U/s 80 CPC issued by his Counsel.

Ext.P-32 is a letter No.A. 46011/1/95-CJ Dt. Aizawl, the 4th June,2001 sent to him by Spl. Superintendent, Central Jail,Aizawl.

Ext.P-33 is stay order Dt.4th July, 2001 issued by the Director,LR&S, Aizawl,Mizoram.

In his cross examination, he deposed that he was allotted the suit land by the Village Council, Luangmual in 1973 but not mentioned that the land was under protected area. He denied that his suit land was under the protected area. He also denied that the DLP No. 85 of 1977 issued to the defendant no. 2 did not cover the area of the pass issued to him by the Village Council, Luangmual. He admitted that till 1993, he possessed only Village Council pass in the suit land. He also admitted that the village council, Luangmual issued land pass to him for the purpose of dwelling. He also admitted that he did not obtain no objection certificate for his neighbours. He also admitted that he village council, Luangmual were not authorized to issue house site pass at that time. Although the said Village Council pass were divided into 12 persons, the other 11 persons were not included as plaintiffs in the instant case. Although the defendants had started utilising their land during 1986, he filed the instant suit on 26.8.2003.

In his re-examination, he clarified that although he deposed that the defendants had started utilising their land in 1986, it was beyond his claim area.

The **PW-2** in his examination in chief deposed that he was a Secretary to the Village Council, Luangmual during 1972-1973, he witnessed that in 1973, the suit land was allotted to the plaintiff by the village council of Luangmual. He also knows that other lands allotted during 1973 by the village council were not cancel by the government, some lands were acquired by the government for Power Grid Corporation and Industrial Estate by giving compensation and the remaining lands were still look after by the villagers as allotted. Most of them already converted into LSCs.

In his cross examination, he admitted that he have not seen the village council pass of the plaintiff. He also familiar with the Executive Order (Rev.) No. 28 of 1971 declaring all lands at Luangmual, Tanhril and Sakawrtuichhun areas as protected area and the Leimak kawngthlang area was also within the jurisdiction of Luangmual village council during the year of 1971. So far as his knowledge concerned, the village council pass of the plaintiff were not regularised till date because of the disputes arising between the plaintiff and the defendants.

The **PW-3** in his examination in chief deposed that he was a Secretary to the Village Council, Luangmual during 1968 and later a member of village council, Luangmual till 1975. He witnessed that in 1973, the suit land was allotted to the plaintiff by the village council of Luangmual when Mr. L.T. Tluanga (L) was the President of Village Council, Luangmual. During their period as village council, he knows that without the prior permission of government, land could not be allotted by the village council, their President and Secretary as Village Council met the concerned authority for permission. Thus, with the said prior permission, they had

allotted land to the villagers. In his knowledge, among the villagers whom they had allotted land during 1973 like the passes of Mr. C. Vanlalsiama, Smt. Laldinpuii and Mr. Hrangtinchhinga were converted into LSCs.

The PW-3 was no cross examined.

The **PW-4** in his examination in chief deposed that he witnessed that in 1973, the suit land was allotted to the plaintiff by the village council of Luangmual when Mr. L.T. Tluanga (L) was the President of Village Council, Luangmual He was also allotted a land in the said elaka by the village council, Luangmual and he already converted into LSC in 1986. In his knowledge, among the villagers whom they had allotted land during 1973 like the passes of Mr. C. Vanlalsiama, Smt. Laldinpuii, Mr. Lalthangfala and Smt. Rohmingthangi were converted into LSCs.

In his cross examination, he admitted that he did not know the exact area of the land allotted to the plaintiff. He did not know that what manner of passes were possessed by the plaintiff at this time. He came to know the instant dispute as the plaintiff informed him that his application for conversion into LSC was rejected. He also admitted that the persons named in his examination chief were free from disputes for conversion into LSCs of their passes.

For the defendants 1-3:

The defendants 1-3 also had produced the following witnesses namely-

1. Mr. C. Lalthianghlima, Deputy Inspector of Prison, Govt. of Mizoram (Hereinafter referred to as DW-1)
2. Mr. K. Lawmthanga, Special Superintendent, Central Jail, Aizawl (Hereinafter referred to as DW-2)

The **DW-1** in his examination in chief, he deposed that –

Ext. D-1 is written statement

Ext. D- 1 (a) is the signature of Deputy Secretary

Ext. D-2 is the Executive (Rev) Order No. 28 of 1971 Dt. 23.12.1971

Ext. D-3 is Executive Order No. 3 of 1972

Ext. D-4 is letter issued to the VCP, Luangmual, Tanhril/Sakawrtuichhun by Director, Land Revenue and Settlement Department

Ext. D-5 is letter to Deputy Commissioner, Revenue by Secretary, Revenue Department dt. 27.1.1981

Ext. D-6 is a letter to Deputy Commissioner by Director, Revenue Department

Ext. D-7 is Revenue Department Order dt. 11.2.1982

Ext. D-8 is Prison Department Pass No. DPL 85 of 1977

Ext. D-9 is a letter to DIG, Prison by Director, Revenue Department

Ext. D-10 is a letter to Pi Lalhmingmawii, Pu Vanlalhruaia, Pi Lalnuntluangi

by I.G. Prison dt. 26.2.1997

Ext. D-11 is a letter to Director, Revenue Department by IG Prison dt. 20.6.2001

(Learned counsels for the plaintiff objected the above documents)

In his cross examination, he admitted that he did not know the contents of Ext. D-1 and he was not the person who initiated. He also admitted that he could not produce original copy of Ext. D-2 to 11. Although he along with the plaintiff inspected the disputed land, they could not reached settlement at their level.

The **DW-2** in his examination in chief deposed that the Central Jail was inaugurated in Sept., 1986. He being Assistant Jailer was the person who started the functioning of Central Jail. He was transfer out from 1993. He stated that within the area covered by DPL No. 85 of 1977, they constructed graveyard. During seven years of utilisation of the suit land, none appear to claim the suit land. He neither knows the plaintiff nor knows the suit land is belonging to the plaintiff.

In his cross examination, he deposed that during 1975 to 1982, he was posted at Lunglei Jail. He was again posted at Tuirial Jail till 1985. In 1985, he was posted at District Jail, Aizawl. During 1986 to 1993, he was posted at Central Jail, Aizawl. Since 2010, he came back to Central jail as Special Superintendent. He admitted that the portion of the land claimed by the plaintiff is not included in the fencing of jail.

POINTS OF RIVALRY

Mr. W. Sam Joseph, learned counsel for the plaintiff stated that The witnesses of the plaintiff clearly stated that the land was allotted by the village council after obtaining the permission as required. The defendants nos.1 to 3 stated that they have the pass issued by the Revenue authorities vide DPL 85 of 1977 but as per the pass there is no mention as the under what provision of law the said DPL pass was issued to them. It is clear that the said DPL pass was not issued in conformity with the land laws in force. In this connection, in the case of **Chalthiangi vs State Of Mizoram And Ors. Reported in (2005) 2 GLR 328 and 2005 (1) GLT** it was clearly held by the Hon'ble Gauhati High court that "The further case of Defendants/Respondents that Pass No. DPL No. 195 of 1980 is a "Periodic Lease" mentioned in the Mizo District (Land & Revenue) Rules, 1967 cannot be accepted as there is absolutely no evidence for following the procedures for getting "Periodic Lease" even if Pass No. DPL 195 of 1980 is taken as a "Periodic Lease". Rule 14 of the Mizo District (Land & Revenue) Rules, 1967 in a very clear term mentioned that the preceding Rules shall apply in granting a Periodic Lease of land" (emphasis/supplier). The Respondents/ Defendants did not produce any evidence to show that proceeding contemplated in Rules 6 to 13 of the Mizo District (Land & Revenue) Rules, 1967 was taken up for the purpose of granting Pass No. DPL 195 of 1980 (even if it is taken as a Periodic Lease). The term "DPL/ Pass" are not mentioned anywhere, either in the Mizo District (Land & Revenue) Act, 1956 or Mizo District (Land & Revenue) Rules, 1967. According to the accepted

Principles, for interpretation of Statute, there cannot be interpretation of any Statute by adding the word(s) not mentioned in the Statute itself. In the present case, for the reasons mentioned above Pass No. DPL 195 of 1980 (Ext. D-II) was not issued in compliance with the provisions of Mizo District (Land & Revenue) Act, 1956 and Rules framed thereunder. Over and above, the present Pass No. DPL 195 of 1980 (Ext. D-II) cannot be the "Periodic Lease" mentioned in the Mizo District (Land & Revenue) Rules, 1967. Therefore, the Pass No. DPL 195 of 1980 cannot create any sort of right contemplated in the Mizo District (Land & Revenue) Act, 1956 and Rules framed thereunder in favour of the Respondents/Defendants in respect of the Suit Land." He further argued that From the evidence on record it is clear that the land was allotted by the Village council authorities after following all the requirements of the law in force at the time of allotment of the pass. The fact that the other persons to whom the said Village Council issued passes and the same were all converted in to LSCs clearly proves that the pass issued in the name of the plaintiff was rightly issued by the village council authorities who were competent to issue the same. From the exhibit P- 14, it is clear that the ASO-II for Director had requested the Government of Mizoram to do the needful for issuance of passes. Along with the said letter ext.14 the ASO-II had sent the original VC Pass and all other connected papers. It is also clear from the Ext P – 2 to P – 13 it is clear that the said House Passes were issued on the basis of the Govt. Order No.LRR/Con-1/83/208 dated 16.5.95. Hence the issuance of the house passes by the Revenue authorities at the instance of the plaintiff in his favour and in favour of his relatives were done in conformity with the land laws in force within Mizoram. Mr. W. Sam Joseph concluded his arguments that from the plain reading of the Judgment passed by the honourable High court referred above it is evident that the DPL alleged to have been issued in favour of the defendant nos. 1 to 3 is not valid and is not in conformity with the land laws applicable to Mizoram. Hence the Passes issued to the plaintiff and his relatives have to be considered as genuine and valid and in the result the plaintiff is entitled to the relief claimed in his plaint.

On the other hand, Mr. R. Lalremruat and Miss Bobita Lalhmingmawii, learned AGAs for the defendants argued that from the plaint, Written Statement and depositions of witnesses, it is clear-

a) That, the suit land as claimed by the plaintiff was divided into 12 plots issued in 12 different names and the plaintiff Pu Siamphunga is just one of them and the other eleven (11) persons were not included as plaintiffs. Since the plaintiff is not the title holder of those eleven (11) plots of land, he does not have the right to sue or locus standi in respect of those eleven (11) plots of land.

b) That the plaintiff filed the present suit on 26.08.03 i.e. 26 years after issuance of DLP No. 85 of 1977 and that the suit is barred by limitation and is liable to dismissal.

c) That the alleged pass of the plaintiff issued on 28.11.1973 cannot be treated as valid pass as it was not supported by previous sanction of the Executive Committee of the Mizo District Council.

d) That as per sec. 1 of the terms and conditions of House Pass, the validity of the alleged passes of the plaintiff is 2 years, and that the said passes are no longer valid.

e) That as per sec. 5 and 7 of the said terms and conditions, the pass holder does not have a right over the soil and the pass can be cancelled at any time.

f) That the plaintiff did not obtain 'no objection certificate' from his neighbor and from the Home Department for issuance of house passes or LSC and that the alleged House Passes of the plaintiff are liable to cancellation.

g) That the plaintiff's witness Pu Laichhunga, who was the V.C., Luangmual Secretary on cross-examination stated that he had not seen the V.C. Pass of the plaintiff and also stated that the said V.C. Pass of the plaintiff was not given during the time he was elected as Secretary, V.C., Court, Luangmual during the year 1972-1975. Hence, the alleged VC pass of the plaintiff seemed to be a faked pass.

h) That the suit land is now under the jurisdiction of Tanhril Village Council, and that the Village Council, Luangmual is not competent to issue no-objection for issuance of passes in respect of the suit land.

Learned Assistant Government Advocates therefore prayed to dismiss of the suit with costs.

FINDINGS

Issue No. 1
Whether the suit is maintainable or not

A requisite court fees at Rs. 5000/- is paid by the plaintiff, prior legal notice as required u/s 80 of CPC is duly served as elicited by Ext. P- 31. Meanwhile, the plaint is accompanied by verification but without affidavit, no specific paragraph wise verification like whether it is within the personal knowledge of the plaintiff or through records or through legal advice is not seen in that facet. Thus, this lacunae is not sustainable as per O. VI. R. 15 of the CPC and as held by the Constitution Bench of the Supreme Court in **A. K. K. Nambiar v. Union of India and another**, AIR 1970 SC 652, held as follows:

> "The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

The recent observation of Hon'ble Apex Court clearly solicited to follow/comply the procedure set forth in the Code of Civil Procedure, 1908 in the case of **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

> "70..... However, in our view, its applicability to the adjudicatory process for determination of 'civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience."

Thus, as inevitably, it is adjudicated that the suit lacks maintainability in the eye of law.

Issue No. 2
Whether the plaintiffs have cause of action against the defendants

The terminology of cause of action is well settled in **Swamy Atmananda & Ors.Vs. Sri Ramakrishna Tapovanam & Ors.** decided on 13/04/2005 in connection with Appeal (Civil) 2395 of 2000 and reported in 2005 AIR 2392, 2005 (3) SCR 556, 2005 (10) SCC 51, 2005 (4) SCALE 117, 2005 (4) JT 472, it was held that-

> "A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded."

And in **M/s. Kusum Ingots & Alloys Ltd. Vs. Union of India and Anr**. decided on 28/04/2004 in connection with Appeal (civil) 9159 of 2003 reported in 2004 AIR 2321, 2004 (1) Suppl. SCR 841, 2004 (6) SCC 254, 2004 (5) SCALE 304, 2004 (1) Suppl. JT 475, it was also observed that-

> "Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

In the light of the above legal principles, although the instant case is different from the ratio recently laid down by the Supreme Court in **Lalrivenga & Anr. vs State Of Mizoram & Ors.** decided on 13 September, 2011 in connection with Civil Appeal No. 7825 of 2011 (Arising out of SLP(C) No.18850 of 2006), house pass is issued in favour of the plaintiff, his claimed land was meanwhile occupied by the defendants. It can be held that cause of action had arisen in favour of the plaintiff.

Issue No. 3

Whether the plaintiffs have locus standi to file the instant suit

In the case of **S.P. Gupta Vs. President Of India And Ors**. decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365, the Constitution Bench of Hon'ble Supreme Court has held that-

> "There have been numerous subsequent decisions of the English Courts where this definition has been applied for the purpose of determining whether the person seeking judicial redress had *locus standi* to maintain the action. It will be seen that, according to this rule, it is only a person who has suffered

> a specific legal injury by reason of actual or threatened violation of his legal right or legally protected interest who can bring an action for judicial redress. Now obviously where an applicant has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule in regard to *locus standi* thus postulates a right-duty pattern which is commonly to be found in private law litigation. But, narrow and rigid though this rule may be, there are a few exceptions to it which have been evolved by the Courts over the years."

In short, being the holder of House Pass No. 102 of 1996, the plaintiff may have locus standi but for the other 11 persons who holds different house passes, without power of attorney or permission granted under O. 1, R. 8 of the CPC, the plaintiff should not have a locus standi to appear and act on behalf of the said other 11 persons.

Issue No. 4

Whether the suit is bad for non-joinder of necessary parties

With regards to non-joinder of necessary parties, the well settled principles of law is that caution should be whether the suit can be fruitfully and effectively adjudicated and realized with parties in the suit. Reliance may be taken in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr**. decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250. And in **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** decided on 20/10/1994 in connection with Appeal (civil) 7067 of 1994 reported in 1995 AIR 724, 1994 (4) Suppl. SCR 646, 1995 (2) SCC 326, 1994 (4) SCALE 755, 1994 (7) JT 304, wherein, the Apex Court has held that-

> "The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681."

Although, there are no questions/issues of non-joinder of necessary parties as defendants in the instant case, DPL No. 85 of 1977 was issued/allotted to the Secretary, Government of Mizoram, Home Department for the purpose of location of Central Jail, instead of impleadment of Secretary, Government of Mizoram, Home Department as defendant, Secretary, Government of Mizoram, Prisons Department is impleaded as defendant no. 3. Pertinently and as well known, the Prison Department, Govt. of Mizoram is under the authority of Secretary, Government of Mizoram, Home Department as head of department as per

the existing Allocation of Business Rules, this laches is also not curable as held in **Chalthiangi vs State Of Mizoram And Ors.** decided on 28 June, 2007 reported again in 2007 (4) GLT 166, Hon'ble Gauhati High Court has observed that-

> "18. That, the learned trial court has erroneously declared the Secretary, Home Department, Govt. of Mizoram who is not even a party in the case at hand, as rightful and legal owner of the land in question. And that the direction given to the respondent Nos. 5 to 8 to cancel LSC No. 57/1988 and allot another suitable land to the appellant-plaintiff are contrary to the facts and circumstances of the case and not supported by the evidences on record. The above findings of the learned trial court are quite perverse and not sustainable in the eye of law."

Needless to spelt out is that the nomenclature of defendants is not also proper by putting first of the Director General of Prisons as the defendant no. 2 and the Secretary to the Government of Mizoram as the defendant no. 3 violating order of precedence and may also effect the proceedings as the impugned DPL No. 85 of 1977 is issued in the name of the Secretary to the Govt. of Mizoram although for the purpose of the defendant no. 2.

More so, the plaintiff alone is the holder of House Pass No. 102 of 1996 with an area of 1200 Sq. m whereas mentioning other 11 persons who holds house passes in the suit land. Recently, the matter is adjudicated in the case of **A.C. Muthiah vs Bd. Of Control For Cricket In India and Anr.** decided on 28 April, 2011 in connection with Civil Appeal No. 3753 of 2011 (Arising out of SLP (C) No. 12181 of 2010), the Supreme Court has observed thus-

> "20. Order I Rule 8 of CPC is an exception to the general rule that all persons interested in a suit should be impleaded as parties thereto. Where large body of persons is interested in one issue, the said provisions facilitate an individual to approach the court without recourse to the ordinary procedure. It is also intended to avoid multiplicity of suits being filed on common issue.

No prayer in the plaint or other miscellaneous applications for seeking permission to sue on behalf of other 11 persons by the plaintiff under the entity of O. 1, R. 8 of CPC is found. If it be so, O. 8, R. (2) of CPC also fails to comply. Thus, as enshrined under O. 1 R. 1 of CPC, the other 11 persons who holds house passes and who appears the relatives of the plaintiff (as prayed under relief no. (c) in the plaint and as mentioned in paragraph no. 10 of the plaint) must join the plaintiff for appropriate decree. Without hearing or perusing their versions, how can the court adjudicate their disputes whether in their favour or negative sense whilst the natural justice requires audi alteram partem. Adjudicating the disputes without affording opportunity of the affected parties will be inimical to natural justice as very cogent.

Issue No. 5
Whether the suit is barred by the principle of limitation, doctrine of estoppel and acquiescence

Although the plaintiff in paragraph no. 15 of his plaint submitted that the applicability of the Limitation Act, 1963 is barred by notification in Mizoram, In the case of **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100, the Hon'ble Gauhati High Court has held that-

> "I cannot agree with the submissions so far advanced by the learned counsel for the petitioners on this issue. It may be true that by virtue of the related notification issued by the Governor of Assam under Para 12 of the Sixth Schedule of the Constitution of India with effect from 1.1.1964 about the non-applicability of the Indian Limitation Act, 1963 to all the tribal areas including the erstwhile Mizo District (not Mizoram); there is no specific notification issued by the Government of Mizoram regarding the non-applicability of Law of Limitation in a suit or suits between the resident tribal and non-tribal. In the instant case, the suit is to be filed by the petitioners who are tribals of the State of Mizoram against the State machinery, i.e., the present respondents and as such, in my considered view, the Law of Limitation shall be applicable in such suit/case."

Also later held in similar terms by the Hon'ble Gauhati High Court in the case of **L. Biakchhunga vs State Of Mizoram And Ors**. decided on 1/8/2005 and reported in (2006) 2 GLR 610. It is therefore crystal clear that the submissions under paragraph no. 15 of the plaint is wrong. In the miscellany of law of limitation, In **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation** in connection with Civil Appeal No. 2075 of 2010 (Arising out of S.L.P. (C) No.10965 of 2009) decided on 26-02-2010, the Supreme Court has held that-

> "8. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression sufficient cause employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for

> condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate – Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) 2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and 10 Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasizing that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay – G. Ramegowda v. Spl. Land Acquisition Officer (1988) 2 SCC 142, State of Haryana v. Chandra Mani (1996) 3 SCC 132, State of U.P. v. Harish Chandra (1996) 9 SCC 309, State of Bihar v. Ratan Lal Sahu (1996) 10 SCC 635, State of Nagaland v. Lipok Ao (2005) 3 SCC 752, and State (NCT of Delhi) v. Ahmed Jaan (2008) 14 SCC 582.

In this arena, under paragraph no. 11 of the plaint, the plaintiff had submitted that the cause of action arose when the defendant no. 2 and the officers of Prison Department buried the dead bodies within the plaintiff's land and also when they obstructed the plaintiff and his relatives from constructing buildings within their land but no exact date and time for cause of action had arisen is not mentioned in the plaint. It therefore leads vague and ambiguous time for cause of action. In this hazy pleading, as argued by learned AGA, the cause of action should be calculated when issuance of DLP No. 85 of 1977 in the suit land if the suit is filed against the defendants viz. 9th May, 1977 while the instant suit is filed on 26.8.2003. No doubt the suit will falls under Article 65 under the Schedule of the Limitation Act, 1963 viz. 12 years from the possession of the defendant becomes adverse to the plaintiff. Evidence of the defendants also reveals that the defendants being the government had taken development of the suit land as far as they can do although red tapism in the governance. Thus, I find no reasons to condone morethan 26 years delay for filing of the suit without reasons at all.

With regards to estoppel, the law is holistically settled in **B.L. Sreedhar & Ors. Vs. K.M. Munireddy (dead) and Ors**. in connection with Appeal (civil) 2972 of 1995 and Appeal (civil) 2971 of 1995 decided on 05/12/2002 reported in 2003 AIR 578, 2002 (4) Suppl. SCR 601, 2003 (2) SCC 355, 2002 (9) SCALE 183, 2002 (10) JT 363, it was observed that-

> "Estoppel is a complex legal notion, involving a combination of several essential elements statement to be acted upon, action on the faith of it, resulting detriment to the actor. Estoppel is often described as a rule of evidence, as indeed it

may be so described. But the whole concept is more correctly viewed as a substantive rule of law... Estoppel is different from contract both in its nature and consequences. But the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the constitution of the cause of action. But the whole case of estoppel fails if the statement is not sufficiently clear and unqualified" " (per Lord Wright in Canada & Dominion Sugar Co. Ltd. v. Canadian National (West Indies) Stemships Ltd. (1946) 3 W.W.R. 759 at p. 764).

"The essential factors giving rise to an estoppel are, I think-

"(a) A representation or conduct amounting to a representation intended to induce a course of conduct on the part of the person to whom the representation was made.

"(b) An act or omission resulting from the representation, whether actual or by conduct, by the person to whom the representation was made.

"(c) Detriment to such person as a consequence of the act or omission where silence cannot amount to a representation, but, where there is a duty to disclose, deliberate silence may become significant and amount to a representation. The existence of a duty on the part of a customer of a bank to disclose to the bank his knowledge of such a forgery as the one in question was rightly admitted." (Per Lord Tomlin, Greenwood v. Martins Bank (1933) A.C.51.) See also Thompson v. Palmer, 49 C.L.R. 547; Grundt v. Great Boulder, 59 C.I.R.675; Central Newbury Car Auctions v. Unity Finance (1957)1 Q.B.371SD.MN

... Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority.

Estoppel, then, may itself be the foundation of a right as against the person estopped, and indeed, if it were not so, it is difficult to see what protection the principle of estoppel can afford to the person by whom it may be invoked or what disability it can create in the person against whom it operates in cases affecting rights. Where rights are involved estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights."

Doctrine of acquiescence is also dealt in the case of **R.S. Madanappa And Ors vs Chandramma And Anr** decided on 5 March, 1965 reported in 1965 AIR 1812, 1965 SCR (3) 283. Although the plaintiff claimed the suit land on the basis of the Village Council passes issued in 1973 and later issued DPL in favour of the defendants in 1977 but belatedly filed the suit on 26.8.2003, such silence of the plaintiff for a long period must be estopped and should also be barred by the doctrine of acquiescence. This

issue is therefore decided in favour of the defendants.

Issue No. 6

Whether non-conversion of the Passes into LSCs of the plaintiff is bad in law while passes of other allottees are already converted into LSCs.

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."

As also admitted by deposition of PW No. 3 in his examination in chief, Executive (Rev.) Order No. 28 of 1971 marked as Ext. D-2 under Memo No. REC.1/712206/15 Dated Aizawl, the 23rd Dec.,/71 declared that the lands within the jurisdiction of the village councils of Luangmual, Tanhril and Sakawrtuichhun as "Protected Area" and 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 under section 3 (1) of the Lushai Hills District (House Sites) Act, 1953 but is exempted only jhum land distribution. All the house passes and agriculture passes issued in the said protected area are later declared as null and void as per Executive Order No. 3 of 1972 marked as Ext. D-3. The claimed on the basis of the village council passes issued during 1973 will become baseless and no locus standi. However, other allottee who obtained village council passes may get benefits for conversion into LSCs is only within the authority of the Executive arena viz. Government of Mizoram/Revenue Department. As discussed, none have a right to claim conversion of Village Council passes into LSCs, if some persons may get such benefits, the law is well settled in the case of **State Of Orissa & Anr. vs Mamata Mohanty** decided on 9 February, 2011 in connection with Civil Appeal No. 1272 of 2011, the Supreme Court has held that-

> "36. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons

> have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide Chandigarh Administration & Anr v. Jagjit Singh & Anr., AIR 1995 SC 705; Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors., AIR 2003 SC 1241; M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors., AIR 2005 SC 565; K.K. Bhalla v. State of M.P. & Ors., AIR 2006 SC 898; Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors., (2008) 9 SCC 24; Upendra Narayan Singh (supra); and Union of India & Anr. v. Kartick Chandra Mondal & Anr., AIR 2010 SC 3455).
>
> This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than perpetuate the same."

Thus, non-conversion of the Passes into LSCs of the plaintiff can not be held bad in law while passes of other allottees under the same footing are already converted into LSCs as the court is precluded to travel beyond statutory laws recently held by the Hon'ble Supreme Court in **Orissa Public Service Commission & Anr vs Rupashree Chowdhary & Anr.** decided on 2 August, 2011 in connection with Civil Appeal No. 6201 of 2011 [Arising out of SLP(C) No. 6751 of 2010].

Issue No. 7

Whether the passes of the plaintiff overlapping the Pass No. DPL 65 of 1977 belonging to the defendant No.1-3 or not. If so, whose land passes will be survived/precedence.

No where in the plaint, the area or extent of overlapping of the passes of the plaintiff by DPL No. 65 of 1977 is elicited. Evidences of the plaintiff are also silent on it. The law in this task is already 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 Supreme Court has held that-

> "7. It is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas."

And in **M/s. Atul Castings Ltd. Vs. Bawa Gurvachan Singh**, AIR 2001 SC 1684, the Supreme Court observed as under:-

> "The findings in the absence of necessary pleadings and supporting evidence cannot be sustained in law."

Also vide, **Vithal N. Shetti & Anr. Vs. Prakash N. Rudrakar & Ors**., (2003) 1 SCC 18; **Devasahayam (Dead) by L.Rs. Vs. P. Savithramma &**

Ors., (2005) 7 SCC 653; and **Sait Nagjee Purushottam & Co. Ltd. Vs. Vimalabai Prabhulal & Ors.**, (2005) 8 SCC 252.)

Thus, such incomplete pleading is not also sustainable in the eye of law towards correct adjudication of the case/suit while the Hon'ble Supreme Court in **Rangammal vs Kuppuswami & Anr.** decided on 13 May, 2011 in connection with Civil Appeal No. 562 of 2003 has observed that-

> "24. It is further well-settled that a suit has to be tried on the basis of the pleadings of the contesting parties which is filed in the suit before the trial court in the form of plaint and written statement and the nucleus of the case of the plaintiff and the contesting case of the defendant in the form of issues emerges out of that. This basic principle, seems to have been missed not only by the trial court in this case but consistently by the first appellate court which has been compounded by the High Court.
>
> 25. Thus, we are of the view, that the whole case out of which this appeal arises had been practically made a mess by missing the basic principle that the suit should be decided on the basis of the pleading of the contesting parties after which Section 101 of The Evidence Act would come into play in order to determine on whom the burden falls for proving the issues which have been determined."

Meanwhile, it can be accepted that due to overlapping of the area claimed by the plaintiff and the area covered by Pass No. DPL 85 of 1977, the instant suit had arisen. No accurate findings can be had due to incomplete pleadings and evidences as discussed above with regards to overlapping of the suit land.

With respect to the validity of Pass No. DPL 85 of 1977 issued by the Government of Mizoram to the defendant no. 2 which is marked as Ext. D-8, although Mr. W. Sam Joseph, learned counsel for the plaintiff took reliance in the decision of Gauhati High Court in its judgment & order dt. 23.1.2005 in the case of **Chalthiangi vs State Of Mizoram And Ors.** reported in (2005) 2 GLR 328 and 2005 (1) GLT, the Hon'ble Apex Court vide order dated 27th February, 2006 passed in Civil Appeal No. 1319/2006 (arising out of SLP. (Civil) Nos. 18543-18544 of 2005) set aside the said judgment & order and thereby remitted to the Gauhati High Court with directions for treating the same as a First Appeal from the decision of the Title Suit No. 2/1990 of the Court of Addl. Deputy Commissioner(J), Lunglei, Mizoram and deciding it with regard to questions of fact and law. Accordingly, the said case has been re-registered as RFA No. 02/2006 in the Gauhati High Court, the Gauhati High Court delivered the said judgment in **Chalthiangi vs State Of Mizoram And Ors.** decided on 28 June, 2007 reported again in 2007 (4) GLT 166, wherein, it was held that the Pass bearing No. DPL. 195/1980 was issued in accordance with the provisions of the relevant Rules viz. Mizo District (Land and Revenue) Rules, 1967, the said judgment reads as under-

> "16. That, admittedly it has been successfully proved that the suit land was permanently settled with late Ngurchhina, the husband of the appellant. The relevant LSC bearing No. 57/1988 along with non encumbrance certificate and no objection certificate were issued on 02.02.1988. As per the legal position discussed above, this court is of the firm opinion that the appellant-plaintiff has got right and title over the suit land by virtue of the said LSC No. 57/1988. On the other hand, it is also an admitted fact that the suit land is a part and parcel of the land which was previously allotted as an area of Armed Police under Miscellaneous Pass No. 88/1953 issued by the Office of the Lushai Hills District Council Executive Department, under the Lushai Hills District (House-sites) Act, 1953 and later on a new Pass bearing No. DPL. 195/1980 in lieu of the Pass No. Misc. 88/1953 has been issued in favour of the Secretary, Home Department, and Govt. of Mizoram. It appears that the land can be allotted with anyone under Pass even after the Mizo District (Land and Revenue) Act, 1956 and Mizo District (Land and Revenue) Rules, 1967 came into force. Rule 10 of the Mizo District (Land and Revenue) Rules, 1967 permits the allotment of land under Pass in accordance with the Lushai Hills District (House-sites) Act, 1953 until and unless the said Act has been repealed. From the above provisions of Act and Rules, it can be safely concluded that the Pass bearing No. DPL. 195/1980 was issued in accordance with the provisions of the relevant Rules.

In short, Mr. W. Sam Joseph sought relief under the figment of the overruled judgment & order in **Chalthiangi vs State Of Mizoram And Ors.** and reported in (2005) 2 GLR 328 and 2005 (1) GLT. Thus, Pass No. DPL 85 of 1977 is legally valid. If encroached or overlapping may be found, House Pass No. 102 of 1996 as Ext. P- 3 belonging to the plaintiff was cogently issued in 1996 while DPL No. 85 of 1977 was obviously issued in 1977 and whereas No. DPL 85 of 1977 rightfully issued in accordance with law. I find no grounds to take precedence of the said House Pass No. 102 of 1996 as junior one as adjudicated above that the previous village council pass was *non-est* and cause of action had only arisen on the basis of the said House Pass No. 102 of 1996.

Issue No. 8

Whether the plaintiff is entitled to the relief claimed by him. If so to what extend and who is/are liable

In the mingling findings of the above and as the suit is enveloped with serious laches/irregularities, I find no entitlement of the plaintiff as he sought in the plaint.

ORDER

UPON hearing of the rival submissions of both parties and evidences adduced by parties gauged as above, it is hereby ORDERED that the suit is dismissed on merit and on maintainability.

Parties are directed to 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 7th December, 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/27/2003, Sr. CJ (A)/ Dated Aizawl, the 7th Dec., 2011

Copy to:

1. Mr. Siamphunga S/o Chuauzinga (L), Luangmual, Aizawl through Mr. W. Sam Joseph, Adv.
2. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Inspector General of Prisons, Govt. of Mizoram- Jail Veng, Aizawl through Mr. R. Lalremruata, AGA
4. The Secretary to the Govt. of Mizoram, Prisons Department through Mr. R. Lalremruata, AGA
5. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department through Mr. R. Lalremruata, AGA
6. The Director, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. The Deputy Commissioner i/c Revenue, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
8. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
9. Case record

PESKAR