

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

CIVIL SUIT NO. 34 OF 2005

Plaintiff:

1. Mr. Lalchhuangzela
S/o Hrangthanzela
Zonuam- Aizawl
2. Smt. Vanlaltlani
D/o Hrangthanzela
Zonuam- Aizawl
3. Smt. Lalramthari
D/o Hrangthanzela
Zonuam- Aizawl

By Advocates

: 1. Mr. Saihmingliana Sailo, Adv.
2. Mr. H. Laltanpuia, Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
Mizoram- Aizawl
2. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl
3. The Under Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl
4. Director
Land Revenue and Settlement Department
Govt. of Mizoram
5. Assistant Director
Land Revenue and Settlement Department
Govt. of Mizoram
6. Assistant Settlement Officer- I
Land Revenue and Settlement Department
Aizawl District: Aizawl
Govt. of Mizoram
7. Assistant Settlement Officer- II
Land Revenue and Settlement Department
Aizawl District: Aizawl
Govt. of Mizoram
8. Mr. C. Lalthakima
S/o C. Rochama (L)

- Upper Khatla, Aizawl
9. Mr. C. Zohmingthanga
S/o C. Kapmawia
ITI Veng, Aizawl
10. Mr. Denghmingthanga
S/o Chalkunga (L)
Tuikhuahtlang, Aizawl
11. Mr. B. Chhawnkima
S/o Nothiauva (L)
Chhing Veng, Aizawl

By Advocate's : Mr. R. C. Thanga, GA

Proforma defendant:

Mr. H. Sangluaia
S/o Israela (L)
Khatla South- Aizawl

Date of Argument : 14-07-2011

Date of Judgment & Order : 22-07-2011

BEFORE

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

JUDGMENT & ORDER

FACTUAL SCENARIO

This is a suit for cancellation of the House Pass No. 483 of 2004 and 484 of 2004, mutation of House Pass No. 524 of 2004, setting aside the Order Memo No. C. 13016/W- 7/04- DISP/DTE (REV): Dated Aizawl, the 18th April, 2005 and for declaration that the plaintiffs are the rightful owner and are entitled to possess, own and enjoy the land covered by House Pass No. 483 of 2004. 484 of 2004 and 524 of 2004 and for other consequential relief. The plaintiffs in their plaint submitted that by virtue of the Luangmual Village Council House site Pass Dt. 22.8.1974 which was issued in the name of Smt. Vankungi, the plaintiffs with the said Vankungi occupied the suit land and settled therein with effect from 1969 with a specific boundary of "*Berampu dotu luikam, Rodinga savawm kahna hmun, VC ramri sahna chin zelah*". The plaintiffs are the grand children of the said Smt. Vankungi. After developing the suit land by them, when they applied to the Revenue authorities for issuance of LSCs in their favour over to the suit land, they refused to issue the same on the grounds that the suit land is within the "Protected Area" beyond the authority of Village Council for issuance of house site pass. In the said alleged "Protected Area", the plaintiffs submitted that the Revenue authorities had issued 53 House Site Pass/LSCs. More so, four LSCs were issued within the suit land where occupied and developed by the plaintiffs. The plaintiffs therefore prays a decree that (i) to set aside the Order Memo No. C. 13016/W- 7/04- DISP/DTE (REV): Dated Aizawl, the 18th April, 2005 issued by the Director, Land Revenue and Settlement to refuse issuance of house site in the Protected Area by the Village Council authorities (ii) Cancellation of House Pass No. 483 of 2004 and 484 of 2004 (iii) directing the defendants 1-7 to

mutate House Pass No. 524 of 2004 in the name of the plaintiff no. 3 (iv) declaring the plaintiffs are the rightful owner and are entitle to possess, own and enjoy the land covered by House Pass No. 483 of 2004. 484 of 2004 and 524 of 2004 (v) injunction restraining the defendants not to interfere in the possession of the land covered by House Pass No. 483 of 2004. 484 of 2004 and 524 of 2004 (vi) staying the operation of the Order Memo No. C. 13016/W- 7/04- DISP/DTE (REV): Dated Aizawl, the 18th April, 2005 (vii) any other relief which this court deems fit and proper for the end of justice in favour of the plaintiffs.

The defendants 1-6 in their written statements submitted that there is insufficiency of requisite court fees in the plaint as per the Court Fees (Mizoram Amendment) Act, 1996 and no valid Legal Notice was served. Further submitted that the suit land is within the “Protected Area” as per Executive Order No. 28 of 1971 Dt. 23.12.1971, in this compliance, the then Mizo District Executive Order No. 3 of 1972 under Memo No. 28/72/289 of 18-03-1972 issued cancellation order of all House Pass/Garden Passes issued by the Village Council, Luangmual. Thus, the Inhmun Pass issued to Pi Vankungi by the Village Council, Luangmual on 22/8/1974 has no legal validity. She therefore did not have any rights to transfer of her suit land. As per Section 4 of the Mizo District (Land and Revenue) Act, 1956, as the land is not recorded and registered either in the DC Office or District Council’s Office, the plaintiffs did not have a locus standi.

The defendant no. 10 in his written statements submitted that being transferred of ownership to him by the defendant no. 7, he is the holder of LSC No. 103702/01/903 of 2006. He rather alleged that the plaintiffs like who dwelled in the suit land without a valid Pass is encroachers.

The defendant no. 11 in his written statements submitted that being transferred of ownership to him by the defendant no. 8, he is the holder of LSC No. 103702/01/835 of 2006. He rather alleged that the plaintiffs like who dwelled in the suit land without a valid Pass is encroachers.

ISSUES

The issues were framed on 13/8/2009 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiffs has cause of action in their favour against the defendants or not.
3. 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 had produced the following witnesses namely-

1. Mr. Lalchhuangzela S/o Hrangthazela, Zonuam, Aizawl (Hereinafter referred to him as PW-1)
2. Mr. H. Sangluaia S/o Israela (L), Zonuam- Aizawl (Hereinafter referred to him as PW-2)

3. Smt. Lalramthari D/o Hrangthanzela, Durtlang Zonuam, Aizawl (Hereinafter referred to her as PW-3)
4. Mr. H.L. Remvela S/o Taukhuma (L), Zonuam- Aizawl (Hereinafter referred to him as PW-4)

The PW-1 in his examination in chief reiterated the contents of the plaint being the plaintiff no.1 himself. He further continued that-

Ext. P- 1 is a copy of Village Council Pass Dt. 22/8/1974

Ext. P-2 is a copy of application for allotment of land to the Revenue Authorities submitted by Hrangthanzela

Ext. P-3 is a copy of Sketch Map of land under Village Council Pass Dt. 22/8/1974

Ext. P-4 is No Objection Certificate

Ext. P-5 is a copy of Letter No. R. 14011/LM/95- DC (A)/61 Dt. Aizawl, the 20th May, 1998

Ext. P-6 is a copy of LSC No. 103702/01/555 of 2004 in favour of Mr. John Neihlaia

Ext. P-7 is a copy of House Pass No. 438/04 in favour or Mr. C. Lalthakima

Ext. P-8 is a copy of House Pass No. 484/04 in favour or Mr. C. Zohmingthanga

Ext. P-9 is a copy of House Pass No. 485/04 in favour or Mr. H. Sangluaia

Ext. P-10 is a copy of representation submitted to Hon'ble Minister, Revenue Dt. 2/5/2004

Ext. P-11 is a copy of Order Dt. 18-04-2005 issued by the Director, LR&S for vacation of the suit land

Ext. P-12 is a copy of Legal Notice.

During cross examination, he deposed that his father and grandmother namely – Smt. Vankungi remains alive, he admitted that the suit is within the protected area. Meanwhile, the Revenue authorities also issued valid Pass to Mr. John Neihlaia within the Protected Area.

The PW-2 deposed in his examination in chief deposed that he is also issued House Pass by the Revenue authorities under House Pass No. 524 of 2004 within the 'Protected Area'.

In his cross examination, he deposed that he is the proforma defendant in the instant suit.

The PW- 3 in her examination in chief merely reiterated the contents of the plaint being the plaintiff no. 3.

In her cross examination, she deposed that they did not have any other valid pass except the Village Council pass. She or other plaintiffs did not submit any letters or documents to sue on behalf of their grandmother Smt. Vankungi.

The PW- 4 in his examination in chief deposed that he knows that the plaintiffs are the grand children of Smt. Vankungi, he witnessed that the Village Council, Luangmual had allotted the land to Smt. Vankungi.

During cross examination, he further deposed that being the then member of the Veng Committee, he recommended the plaintiffs to allot the land.

For the defendants 1-6:

The defendants 1-6 had produced the following witnesses namely-

1. Mr. K. Lalhmuakliana, Assistant Director, Land Revenue and Settlement Department, Govt. of Mizoram (Hereinafter referred to as DW-1 of defts 1-6)
2. Mr. Hmangaihzualla, Surveyor, Revenue Department (Hereinafter referred to as DW-2 of defts 1-6)

The DW-1 of defts 1-6 in his examination in chief deposed that the plaintiffs had applied land allotment on the basis of the Pass issued by the Village Council, Luangmual within the Protected Area under Executive Order No. 28 of 1971 issued by the erstwhile Mizo District Council which preclude issuance of Village Council pass without prior approval of the District Council. Ext. P- 7 and 8 were duly issued after observing all legal ingredients.

During his cross examination, he deposed that he did not know whose actual possession is the suit land.

The DW- 2 of defts 1-6 deposed in his examination in chief that the suit land is within the Protected Area declared under Executive Order No. 28 of 1971, he was involved to assessed the landed properties of Mr. C. Zohmingthanga and Mr. C. Lalthakima as official detailed.

In his cross examination, he deposed and admitted that for issuance of the passes of Mr. C. Zohmingthanga and Mr. C. Lalthakima, the plaintiffs did not sign in the No Objection Certificate.

For the defendant no. 10:

The defendant no. 10 himself stood as his witness (Herein referred to as DW of defendant no. 10), in his examination in chief, he reiterated the contents of his written statements

In his cross examination, he deposed that he had purchased his suit land from one Mr. C. Lalthakima.

For the defendant no. 11:

The defendant no. 11 himself stood as his witness (Herein referred to as DW of defendant no. 11), in his examination in chief, he reiterated the contents of his written statements

In his cross examination, he deposed that he had purchased his suit land from one Mr. C. Zohmingthanga in consideration of Rs. 25,000/-. Mr. Hrangthanzela is resided adjacent to his suit land.

FINDINGS

Issue No. 1 Maintainability of the suit

On meticulously examining the plaint, there is insufficiency of requisite court fees but which is curable u/s 149 of the CPC, I find no other legal infirmities in the plaint which vitiate the proceedings.

Issue No. 2

Whether the plaintiffs has cause of action in their favour against the defendants or not.

As admitted in the plaint and evidence adduced by the PWs, the Village Council, Luangmual allotted land for house site to one Smt. Vankungi on 22.08.1974 with a specific boundary of "*Berampu dotu luikam, Rodinga savaum kahna hmun, VC ramri sahna chin zelah*". Cause of action or locus standi will determine by the legal grounds of the plaintiffs as very cogent factors. As submitted by the defendants 1-6 in their written statements that the suit land is within the "Protected Area" as per Executive Order No. 28 of 1971 Dt. 23.12.1971, in this compliance, the then Mizo District Executive Order No. 3 of 1972 under Memo No. 28/72/289 of 18-03-1972 issued cancellation order of all House Pass/Garden Passes issued by the Village Council, Luangmual. Thus, the Inhmun Pass issued to Pi Vankungi by the Village Council, Luangmual on 22/8/1974 has no legal validity. She therefore did not have any rights to transfer of her suit land. As per Section 4 of the Mizo District (Land and Revenue) Act, 1956, as the land is not recorded and registered either in the DC Office or District Council's Office, the plaintiffs did not have a locus standi. In short, Inhmun Pass issued to Pi Vankungi by the Village Council, Luangmual made on 22/8/1974 was without authority and proper governance as curbed by Executive (Rev) Order No. 28 of 1971 issued on 22nd Dec., 1971 with having immediate effect.

However, the said Executive Order No. 3 of 1972 with having immediate effect was made on 18th March, 1972 which revealed cancellation of all previous allotment made by the Village Council of Luangmual and precluded to develop all the said cancelled landed properties which is issued in compliance with the Executive (Rev) Order No. 28 of 1971, wherein, by virtue of S. 3 (1) of the Lushai Hills District (House Sites) Act, 1953, the jurisdiction of the Villages Councils of Luangmual, Tanhril and Sakawrtuichhun shall immediate effect declared as "Protected Area" which curbed issuance of House Site pass by the Village Council without prior sanction of the Executive Committee of the Mizo District Council except on jhum land distribution. Thus, the said Executive (Rev) Order No. 28 of 1971 is duly promulgated having legal entity.

The other points advanced by the defendants 1-7 viz. Section 4 of the Mizo District (Land and Revenue) Act, 1956 is also relevant in the instant dispute which read as-

"4. No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied before the commencement of this Act unless such land had been recorded and registered either in the Deputy Commissioner's Office or the District Council's Office.

In addition to the above, the plaintiffs by calling the Village Council Pass issued in the name of Smt. Vankungi filed the instant suit for making allotment of land to them but without Power of Attorney filed the suit as evidence of the plaintiffs revealed that the plaintiffs are merely the grand children of Smt. Vankungi who hold the disputed Village Council Pass. The submission of defendants 1-7 is also attracted like the Village Council Pass is not transferable as per the Lushai Hills District (House Sites) Act, 1953.

At the time of oral arguments, Mr. R.C. Thanga argued that the landed property of Mr. John Neihlaia which is also within the "Protected

Area” was duly issued by the Government within their competency is correct as the said Executive (Rev) Order No. 28 of 1971 remains authorized the Government to make allotment in the ‘Protected Area’ including the Village Council concerned with prior approval of the Government.

Thus, I find no locus standi in favour of the plaintiffs in the instant suit and against the defendants as land allotment is within the ambit of the Government viz. Land Revenue and Settlement Department, Govt. of Mizoram. In a nutshell, the plaintiffs has no legal rights to claim the suit land in the original civil courts like this court but rather lies in the clemency and prudence on the Government as land allotment is solely in their domain.

Issue No. 3

Whether the plaintiffs are entitled to the relief claimed or not. If so, to what extend.

As per the findings under issue no. 2, the plaintiffs are not entitled to the relief which they claimed in this court as the matter purely lies in the discretion of the Government i.e. Land Revenue and Settlement Department, Govt. of Mizoram who are expected them to perform governance without any arbitrary, discriminative and perjury act.

DIRECTIVES

Thus, the inevitable conclusion is to dismiss the suit on merit as not possible to embark liabilities on the defendants. The suit is therefore dismissed but no order as to costs.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. CS/34/2005, Sr. CJ (A)/

Dated Aizawl, the 22nd July, 2011

Copy to:

1. Mr. Lalchhuangzela S/o Hrangthanzela, Zonuam- Aizawl through Mr. Saihmingliana Sailo, Advocate
2. Smt. Vanlaltlani D/o Hrangthanzela, Zonuam- Aizawl through Mr. Saihmingliana Sailo, Advocate
3. Smt. Lalramthari D/o Hrangthanzela, Zonuam- Aizawl through Mr. Saihmingliana Sailo, Advocate
4. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Mizoram- Aizawl through Mr. R. C. Thanga, GA
5. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. C. Thanga, GA

6. The Under Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. C. Thanga, GA
7. Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. C. Thanga, GA
8. Assistant Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. C. Thanga, GA
9. Assistant Settlement Officer- I, Land Revenue and Settlement Department, Aizawl District: Aizawl, Govt. of Mizoram through Mr. R. C. Thanga, GA
10. Assistant Settlement Officer- II, Land Revenue and Settlement Department, Aizawl District: Aizawl, Govt. of Mizoram through Mr. R. C. Thanga, GA
11. Mr. C. Lalthakima S/o C. Rochama (L), Upper Khatla, Aizawl through Mr. R. C. Thanga, GA
12. Mr. C. Zohmingthanga S/o C. Kapmawia, ITI Veng, Aizawl through Mr. R. C. Thanga, GA
13. Mr. Denghmingthanga S/o Chalkunga (L), Tuikhuahtlang, Aizawl through Mr. R. C. Thanga, GA
14. Mr. B. Chhawnkima S/o Nothiauva (L), Chhinga Veng, Aizawl through Mr. R. C. Thanga, GA
15. Mr. H. Sangluaia S/o Israela (L), Khatla South- Aizawl
16. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
17. Case record

PESKAR