

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

CIVIL SUIT NO. 158 OF 2010

Plaintiff:

Mr. Lukawlha
S/o Hrangchhuana (L)
Samtlang, Aizawl District

Versus

Defendants:

1. The Secretary to the Govt. of Mizoram
Department of School Education
2. Director
School Education Department
Govt. of Mizoram
3. District Education Officer
Aizawl West, Govt. of Mizoram
4. Sub-Divisional Education Officer
Aizawl West, Govt. of Mizoram
5. Headmaster
Comprehensive Middle School
Govt. of Mizoram
Samtlang- Aizawl District
6. Head Teacher
Govt. Primary School
Govt. of Mizoram, Samtlang
7. Secretary to the Govt. of Mizoram
Revenue Department
Mizoram- Aizawl
8. Director
Land Revenue and Settlement Department
Govt. of Mizoram
9. Assistant Settlement Officer-I
Aizawl District: Aizawl
Land Revenue and Settlement Department
Govt. of Mizoram
10. Assistant Settlement Officer-II
Aizawl District: Aizawl
Land Revenue and Settlement Department
Govt. of Mizoram
11. Village Council/Court
Samtlang, Aizawl District

PRESENT:

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

For the Plaintiff	: Mr. K. Kawlkhuma, Adv.
For the defendants 1-6 & 11	: Mr. F. Lalengliana, Adv.
For the defendants 7-10	: Mr. R. Lalremruata, AGA

Date of hearing	: 07-06-2011
Date of Order	: 08-06-2011

ORDER

Preliminary hearing of the suit is conducted on 7/6/2011, learned Counsels of both parties appeared.

GERMINATION OF THE CASE

This is a suit to declare Inhmun Pass Dt. 27.11.1969 issued by the Village Council, Khawchhete in favour of the plaintiff is valid and to null and void School Pass No. 56 of 1976 issued by the Director, Land Revenue and Settlement Department, Govt. of Mizoram under No. DSL/GW-10/76/2496-01, Dated Aizawl, the 29th March, 1976 and to quash the connected orders passed by the authority of Land Revenue and Settlement Department, Govt. of Mizoram which against the suit land in favour of the defendant and rental charges from the suit land occupied by the defendants.

The defendants 1-6 stated in their written statements that the suit is bad for law of limitation. They totally denied the averments and submissions in the plaint stating that Samtlang Middle School was established in 1971 by calling in the name of the then Deputy Commissioner Mr. A.C. Ray known as A.C. Ray Middle School, Khawchhete. The Annexure - 8 in the plaint also reveals that the plaintiff could not produce any valid House Pass in 1972 when called upon by the Village Court. Thus denied that the instant House Pass annexed in the plaint is figment. The plaintiff rather committed trespass by planting some plants in the suit land within the suit land which is within the School Pass No. 56 of 1976 and under DLL 70 of 2006 under Memo No. L. 11019/DPL/PS-1-ST/90-DTE (REV) Dated Aizawl, the 23-04-2006 issued in favour of the defendant no. 1. The defendants 1-6 rather filed counter claim to remove two aluminum reservoirs located by the plaintiff in the suit land and to evict the plaintiff from the suit land.

The defendants 7-10 also submitted their written statements stating that the suit is bad for law of limitation and is not appropriate to maintain as Civil suit which is a formal defect. In short, the defendants 7-10 by complying all legal formalities issued School Pass No. 56 of 1976 and DLL 70 of 2006 under Memo No. L. 11019/DPL/PS-1-ST/90-DTE (REV) Dated Aizawl, the 23-04-2006, the plaintiff therefore does not have any locus standi to file the suit at all.

The defendant no. 11 also submitted written statements contending that the plaintiff did not raise any objections during the establishment of Samtlang Middle School in the year 1971. Before the Village Court when the plaintiff was called upon, the plaintiff fails to produce any Pass/document over to the suit land and to set aside a fine of Salam, the plaintiff is alleged fabricated Inhmun Pass to exonerate before the then Subordinate District Council Court. The suit is therefore liable to dismiss at the threshold.

PRELIMINARY ISSUES

On perusal of case records and on hearing of parties with relying in the case of **Vinod Seth vs Devinder Bajaj & Anr.** decided on 5th July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], the Supreme Court has held that-

“10. Every person has a right to approach a court of law if he has a grievance for which law provides a remedy. Certain safeguards are built into the

Code to prevent and discourage frivolous, speculative and vexatious suits. Section 35 of the Code provides for levy of costs. Section 35A of the Code provides for levy of compensatory costs in respect of any false or vexatious claim. Order 7 Rule 11 of the Code provides for rejection of plaint, if the plaint does not disclose a cause of action or is barred by any law. Order 14 Rule 2 of the Code enables the court to dispose of a suit by hearing any issue of law relating to jurisdiction or bar created by any law, as a preliminary issue."

Preliminary issue is therefore framed on 1/6/2011 as follows-

1. Whether the plaintiff has cause of action against the defendants or not
2. Whether the suit is barred by law of limitation or not

POINTS OF RIVALRY

Mr. K. Kawlkhumma, Ld. Counsel for the plaintiff submitted that as annexed and compared with original, the plaintiff by having a House site pass from the concerned Village Council over to the suit land have a cause of action whilst certainly encroached by the defendants. The Village Council being a rural area is competent to issue the said Pass as per the Lushai Hill District (House Sites) Act, 1953. Learned counsel for the plaintiff could not mention the provisions of law where to be condoned period of limitation as well as the number of relevant Articles under the Limitation Act, 1963.

Mr. F. Lalengliana, learned counsel for the defendants 1-6 and 11 contended that the alleged Village Council pass was not genuine and is hazy without proper records whilst the defendants have a valid Pass/permit from the Revenue authorities. Since the cause of action had arisen on 29th March, 1976 when issuance of School Pass No. 56 of 1976, the suit is cogently bad for law of limitation without sufficient reasons.

FINDINGS

Preliminary Issue No. 1 Cause of action

Firstly, let us take reliance for widening our horizon 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-

"14. The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority or any other person or who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is personal injury to property, body, mind or reputation arising from violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born. The leading case in which this rule was enunciated and which marks the starting point of almost every discussion on *locus standi* is *Ex parte Sidebotham* (1980) 14 Ch D 458. There the Court was concerned with the question whether the appellant could be said to be a 'person aggrieved' so as to be entitled to maintain the appeal. The Court in a unanimous view held that the appellant was not entitled to maintain the appeal because he was not a 'person aggrieved' by the decision of the lower Court. James, L. J. gave a definition of 'person aggrieved' which, though given in the context of the right to appeal against a decision of a

lower Court, has been applied widely in determining the standing of a person to seek judicial redress, with the result that it has stultified the growth of the law in regard to judicial remedies. The learned Lord Justice said that a 'person aggrieved' must be a man "who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something." Thus definition was approved by Lord Esher M. R. in *In Re Reed Bowen & Co.* (1887) 19 QBD 174 and the learned Master of the Rolls made it clear that when James L. J. said that a person aggrieved must be a man against whom a decision has been pronounced which has wrongfully refused him of something, he obviously meant that the person aggrieved must be a man who has been refused something which he had a right to demand. 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."

It is again impelled to examine the meaning and very concept of cause of action in terms of the following giant precedents-

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."

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 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 **Mr. V. Narayanaswami Vs. Mr. C.P. Thirunavukkarasu** decided on 19/01/2000 reported in 2000 AIR 694, 2000 (1) SCR 292, 2000 (2) SCC 294, 2000 (1) SCALE 153, 2000 (1) JT 194

“Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action.”

In **Ananga Uday Singh Deo Vs. Ranga Nath Mishra & Ors** in connection with Appeal (civil) 6658 of 2000 decided on 12/10/2001 reported in 2001 AIR 2992, 2001 (4) Suppl. SCR 88, 2002 (1) SCC 499, 2001 (7) SCALE 172, 2001 (8) JT 574

“Non-compliance with the provisions of Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 and Order 7 Rule 11 of the Code of Civil Procedure. Where neither the verification in the petition nor the affidavit gives any indication of the sources of information of the petitioner as to the facts stated in the petition which are not to his knowledge and the petitioner persists that the verification is correct and the affidavit in the form prescribed does not suffer from any defect the allegations of corrupt practices cannot be inquired and tried at all. In such a case the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law as to pleadings. It is no part of the duty of the court suo motu even to direct furnishing of better particulars when objection is raised by the other side. Where the petition does not disclose any cause of action it has to be rejected. The court, however, cannot dissect the pleadings into several parts and consider whether each one of them discloses a cause of action. The petition has to be considered as a whole. There cannot be a partial rejection of the petition.”

In the light of the above glaring guiding principles, it can be further discussed that a copy of Inhmun Pass annexed as Annexure-1 in the plaint is put in small piece of paper appears extracted from Exercise Note book with lining simply written that the plaintiff is allotted House site pass located at Nguri Lo Tlang and in the North- Zotui Pengthuam, in the south- Tuikhuah kawng, khoral kawng, in the east- Zotui kawr and in the west Aizawl kawng atanga khawchhung kawnga chho in Zotui pengthuam ah. Meanwhile, the boundary description of School Pass No. 56 of 1976 reads that in the south- Pu Lukawlha huan kalkawng phei chin chunglan, in the north- Aizawl kawng lamlian atangin, in the east- Zotui leh khawchhung kalna kawng pengthuam chin and in the west- Motor kawng leh Pu Lukawlha peng chin.

However, in the Stay Order issued by the ASO-I, Aizawl District under memo No. R. 13011/11/87-DC (A)/ Dt. 9.7.1992, it was revealed that the plaintiff could not produce any valid land pass during spot verification as annexed by the defendants 1-6. Furthermore, in the official survey conducted on 04-07-2002 by Mr. H. Lalenvela, Surveyor – II, DLR&S, he found that the Inhmun Pass lately obtained by the plaintiff is fabricated document. The latest findings of Director, Land Revenue and Settlement Department, Govt. of Mizoram under Memo No. C. 13016/A-1/02-DISP/DTE (REV)/130 is also similar and same with the previous various findings of his department.

Since the alleged Village Council Pass hold by the plaintiff is vague and debatable and as admitted that no records in the registry of Village Council concerned is also traceable whilst the Village Council concerned itself is denied on the said Pass and rather against the plaintiff as defendant no. 11. I have not seen any cause of action against the defendants and in favour of the plaintiff. In a very nutshell, further evidence/proceedings will also be non-est to fructify the said Village Council Pass and its validity. The resolution adopted by the Joint Action Committee, Samtlang under Memo No. 2/2010/JAC Dated 31st September, 2010 undersigned by the President, Village Council, Samtlang, President, YMA Branch- Samtlang, President, MHIP, Samtlang Branch, President, MUP, Samtlang and President, MZP, Samtlang an annexed in Annexure-11 of the plaint also determined that no evidence will lead the validity of the said Village Council Pass alleged issued in favour of the plaintiff.

Pertinently, the alleged Village Council Pass hold by the plaintiff is without any sketch map and ambiguousness of its boundary description or measurement also. I have no expectations to divert findings other than the findings of the Revenue authorities to accurate on the crux.

Preliminary Issue No. 2
Law of Limitation

Admittedly, a suit like in the instant case where the State Defendants are a party as a non-tribals, the provisions of the Limitation Act, 1963 is applicable in the state of Mizoram as held by the Hon'ble Gauhati High Court 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 and in the case of **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610. Although the plaintiff claimed without reasons under paragraph no. 22 of the plaint that the cause of action had arisen on 22nd September, 2010, the main challenged in the suit is School Pass No. 56 of 1976 but no other grounds for condonation of delay. As already stated, learned counsel for the plaintiff could not tell the court about the period permissible like in the instant case as well as sufficient reasons to condone delay for filing of the suit.

ORDER:

In the afore lengthy discussion and heavy reliance preferred as above, due to no *locus standi* of the plaintiff leading cause of action plus barred by law of limitation, the suit is therefore rejected as well as dismissed on merit. In respect of counter claim preferred by the defendants 1-6, as the counter claim is solely to evict the plaintiff from the suit land with his properties, as the suit is not only rejected but also dismissed, another measures under Rule 40 of the Mizo District (Land and Revenue) Rules, 1967 remains available for them.

The case alongwith pending connected Misc. application shall stand disposed of accordingly but without costs.

Give this order copy to both parties.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. CS/158/2010, Sr. CJ (A)/ Dated Aizawl, the 8th June, 2011

Copy to:

1. Mr. Lukawlha S/o Hrangchhuana (L), Samtlang, Aizawl District through Mr. K. Kawlkhuma, Advocate
2. The Secretary to the Govt. of Mizoram, Department of School Education through Mr. F. Lalenglina, Advocate
3. Director, School Education Department- Govt. of Mizoram through Mr. F. Lalenglina, Advocate
4. District Education Officer, Aizawl West, Govt. of Mizoram through Mr. F. Lalenglina, Advocate
5. Sub-Divisional Education Officer, Aizawl West, Govt. of Mizoram through Mr. F. Lalenglina, Advocate

6. Headmaster, Comprehensive Middle School, Govt. of Mizoram, Samtlang- Aizawl District through Mr. F. Lalenglina, Advocate
7. Head Teacher, Govt. Primary School, Govt. of Mizoram, Samtlang through Mr. F. Lalenglina, Advocate
8. Secretary to the Govt. of Mizoram, Revenue Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
9. Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
10. Assistant Settlement Officer-I, Aizawl District: Aizawl, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
11. Assistant Settlement Officer-II, Aizawl District: Aizawl, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
12. The President, Village Council/Court, Samtlang, Aizawl District through Mr. F. Lalenglina, Advocate
13. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
14. Case record

PESKAR