

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

CIVIL SUIT NO. 01 OF 1999

Plaintiff:

Mr. M. Lalvuana  
S/o Thanghlira (L)  
Chanmari- Aizawl

*By Advocates*

: 1. Mr. C. Lalramzauva, Sr. Advocate  
2. Smt. Helen Dawngliani, Adv.

*Versus*

Defendants:

1. The State of Mizoram  
Through the Chief Secretary to the  
Government of Mizoram
2. The Secretary to the Govt. of Mizoram  
Environment & Forest Department
3. The Principal Chief Conservator of Forest  
Govt. of Mizoram  
Mizoram- Aizawl
4. The Divisional Forest Officer  
Kolasib Forest Division  
Kolasib- Mizoram
5. Mr. C. Sanghluna  
S/o Tlanglawma (L)  
B. Suarhliap- Mizoram

*By Advocate's for Deft. No. 1-4* : Mr. Lalramhluna, Adv.

Date of Arguments : 10-05-2011

Date of Judgment & Order : 18-05 -2011

**BEFORE**

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

**JUDGMENT & ORDER**

**GENESIS OF THE CASE**

This is a suit for declaration of title in favour of the plaintiff in respect of 360 teak trees within the land covered by permit no. 71/1963 in the name of Tlanglawma S/o Thangliana now inherited by the defendant no. 5 Mr. C. Sanghluna. As the plaintiff teak trees as many as 360 from the defendant no. 5 in 1988 in consideration of Rs. 45,000/-. As duly

conducted spot verification, the defendants issued permit to fell down and selling of the said teak trees outside the state of Mizoram under No. B. 11020/4/94-FST Dt. 5/12/1994. Due to vigilance case against some officials of the defendants, issuance of transit pass and felling down of teak trees was delayed. Thereafter, the defendants 1-4 claimed that the disputed teak trees were planted by the Forest Department and thereby claimed ownership of the same. A requisite court fees at Rs. 2973/- is also paid. Thus, prayed to declare the plaintiff as the rightful owner of the disputed teak trees within Permit No. 71 of 1963 located at B. Suarhliap and a decree for enforcement of the approval of the Government for issuance of felling and transit pass in favour of the plaintiff Vide, No. B. 11020/4/94-FST Dt. 5/12/1994 and No. B. 14017/17/94- PCCF/279 Dt. 9/12/1994 communicated by the DCF (Headquarter) Office of the Principal Chief Conservator of Forest to the defendant No. 4. And any other cost and relief which this court deems fit and proper.

The defendants 1-4 filed written statements stating that the plaintiff has no locus standi and cause of action against the defendants. A Legal Notice issued u/s 80 of CPC was different from the claimed preferred in the case, alleged Garden Pass Permit No. 71/63 is vague and cannot be identified. More so, the suit is bad for non-joinder of necessary party as per S. 2 of the Forest (Conservation) Act, 1980 as the Central Government is a necessary party. Thus, liable to dismiss of the suit. The claimed area of the plaintiff falls in the area covered by Govt. Teak Plantation, 1976 and which is within the elaka of Tlawng riverine reserved area. Furthermore, on being misled by the plaintiff, Mr. Lalkunga, ACF conducted spot verification and communicated the same to the office of PCCF but the defendant no. 4 detected that the claimed teak trees were within Govt. Plantation area. Thus, refused to issue permit for felling and transit outside the state. The verification conducted by the said Mr. Lalkunga was not official assignment and could not be taken as government action. The defendants 1-4 therefore prayed to dismiss of the suit with costs.

Meanwhile, the defendant no. 5 did not contest in the instant suit for filing of written statements or cooperate the proceedings.

### **ISSUES**

The issues were framed on 25/9/2000 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 plaintiff has a cause of action against the defendants
2. Whether there is deficiency of requisite court fees
3. Whether the suit is bad under S. 80 of the CPC as different from legal notice served to the defendants
4. Whether the suit is bad for non-joinder of necessary party by not impleadment of Central Government
5. Whether the teak trees claimed by the plaintiff fall within the Govt. teak plantation, 1976 which is inside Tlawng riverine reserved forest.

6. Whether the teak trees claimed by the plaintiff is within the boundary description of Permit No. 71 of 1963
7. 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 witness namely-

1. Mr. M. Lalvuana S/o Thanghlira (L), Chanmari- Aizawl (Hereinafter referred to as PW-1)
2. Rochamlia S/o A. Romawia, Chanmari- Aizawl (Hereinafter referred to as PW-1)
3. Mr. Lalkunga S/o Sawikhuma (L), Venglai- Kolasib (Hereinafter referred to as PW-1)

The PW-1 deposed in his examination in chief that he had purchased teak trees as many as 360 from one Mr. C. Sanghluna who inherited from his father in 1988 under Permit No. 71 of 1963, his adjoining areas also fell down teak trees in their land with the prior permission of Forest Department as required. He also applied for felling and transit permit, Mr. Lalkunga, the then ACF also verified and marked all teak trees to fell down and on that basis, the DCF under his memo No. B. 14017/17/94-PCCF/279 Dt. 9/12/1994 issued direction to the defendant no. 4 for issuance of permit for felling and permit of the said teak trees. Meanwhile, the DFO, Kolasib demanded to the plaintiff a sum of Rs. 20,000/- but the plaintiff refused to pay. Thus, the said DFO refused to issue the said permit. The plaintiff also served Legal Notice to all defendants on 14.3.1997 through his lawyers demanding a required permit within two months and for payment of a sum of Rs. 4,45,000/- with interest. He thereby filed a civil suit under No. 6/97. As written by the Minister concerned Dt. 29.1.99 and approaching the then DFO, Kolasib, as advised by the said DFO, the said suit was withdrew, as the said DFO remains blenched to issue necessary permit, the instant suit is again filed.

*Ext. P-1 is a copy of Permit No. 71/63*

*Ext. P-1(a) is a tax payment receipt on the suit land*

*Ext. P-2 is a copy of certificate issued by Mr. Lalkunga Dt. 4.2.1999*  
ACF (Retd.)

*Ext. P-3 is a certificate issued by VCP, Bairabi Dt. 15.10.1993*

*Ext. P-4 is a letter Dt. 9.12.1994 issued by the DCF to the DFO, Kolasib*

*Ext. P-5 is the certificate Dt. 18.1.1999 issued by Rev. R.B. Laitawia,*  
Chanmari- Aizawl

*Ext. P-6 is the certificate Dt. 10.1.1992 issued by the VCP, Bairabi*

*Ext. P-7 is joint statements made by himself and the deft. No. 5*

*Ext. P-8 is Legal Notice u/s 80 CPC*

*Ext. P- 9 is the Order Dt. 6.1.1999*

In his cross examination, he deposed that in accordance with Permit No. 71/63, the full description of the suit land is "B. Suarhliap Tawna ri-ah", he admitted that no specific boundary description like north, south, east and west were not contained in the permit. Although they executed sale deed of the suit land he did not submit in the court. He do not know that the suit land is situated on the downhill side in between the deserted B. Suarhliap village and the River Tlawng or not but he is ascertained that the claimed teak trees lies within the deserted B. Suarhliap village. Although DCF wrote a letter to DFO, Kolasib for issuance of permit on 9.12.1994, he filed the instant suit on 9.3.1999. He fails to report missing teak trees in the suit land to Police Station.

The PW-2 deposed that he is a close friend of the plaintiff, as requested by the plaintiff, he pursued the matter for obtaining necessary permit for felling and transit of the teak trees of the plaintiff. After the obtained permit from the Forest Department, sport verification and physical marking of teak trees was also done in his presence by Mr. Lalkunga, the then ACF who also taken a charge of DFO during the absence of the then incumbent Mr. Suanzalang and thereby marking as many as 360 teak trees. No claimed by the Forest Department about the suit land was arise at that time. As per the report of the said ACF, Ext. P- 4 was issued. However, Mr. B. Suanzalang, the then DFO, Kolasib was transferred and posted Mr. Liandawla DCF as DFO, Kolasib. He refused to issue necessary permit for felling and transit of the said teak trees. He later claimed that the said teak trees were belonging to Forest Department. No Forest teak plantation lies in the elaka of the suit land as the adjoining land belonging to Mr. Laltula also already fell down and disposed of his teak trees outside the state of Mizoram.

In his cross examination, he further deposed that the river Tlawng is not far from the suit land, he denied that the teak trees claimed by the plaintiff falls within the Govt. teak plantation, 1976.

The PW- 3 deposed that he was an ACF, Kolasib and assigned by the then DFO, Kolasib to conduct spot verification of the dispute teak trees and physical marking of the same under letter No. B. 14017/13 (P)/92- DFO (K) 9561 Dt. 17.02.1993, he was accompanied by one Mr. Rochamlia, representative of the plaintiff and two Forest Constables namely- Mr. Thankima and Mr. Ngura. They therefore conducted spot verification and physical marking of teak trees on 17/2/1993. At that there was no dispute at all about the suit land as admitted in toto of the land belonging to the plaintiff. Due to loss of hammer, marking of teak trees was conducted for two days. In the adjoining land belonging to one Mr. Laltula, his teak trees were already fell down with the prior permission of the PCCF. He thereby submitted his verification report to the DFO, Kolasib and again forwarded to the PCCF. Ext. P- 3 was a document prepared by him and Ext. P- 2 (a) is his true signature.

In his cross examination, he denied that he is the close friend of the plaintiff. He admitted that he fails to consult the Plantation Journal nor Pu G.L.K. Thanga, the then Range Officer of Bairabi before marking teak trees.

He further denied that the Forest Department have had a teak plantation since 1976 onwards in the suit land. At that time Mr. B. Suanzalang was the DFO, Kolasib, he himself as in charge of DFO, Kolasib forwarded his marking report to the PCCF as the said Mr. B. Suanzalang was on tour. He also admitted that the boundary description of Permit No. 71 of 1963 belonging to the plaintiff is vague.

In his re-examination, he deposed that due to not maintain of Plantation Journal at that time, he did not consult the same.

For the defendants 1-4:

The defendants 1-4 had produced only one witness namely- Mr. R. Rotluanga, ACF, Kolasib (hereinafter referred to as DW). He therefore deposed that due to bad of the suit u/s 80 of CPC and vagueness of the Garden Permit No. 71 of 1963, the suit is liable to dismiss and also denied to seek amicable settlement with the plaintiff. The area claimed by the plaintiff is within Govt. Teak Plantation, 1976 which is Tlawng riverine reserved forest area. The area claimed by the plaintiff under Garden Permit No. 71/63 is situated on the down hill side in between deserted B. Suarhliap village and River Tlawng whereas Govt. Teak Plantation of 1976 is situated on the uphill side above deserted B. Suarhliap village. Both the areas can be physically verified on the spot. Therefore the teak trees claimed by the plaintiff fall within Govt. Teak Plantation of 1976 and he has no right over them. On being misled by the plaintiff, Mr. Lalkunga, the then ACF without consulting Plantation Journal nor R.O, Bairabi marked the teak trees which were inside the Govt. Teak Plantation of 1976, the said verification was carried out without the knowledge of the DFO/RO concerned. Without authority, the said Mr. Lalkunga submitted a report to the PCCF in violation of the existing rules and regulations to approach the head of Department without a written instructions from the controlling officer. The said 1976 plantation was raised under tongya and local people about 33 families cultivated agriculture crops in the plantation area during its creation year i.e. 1976 and when the news that felling permit was issued to the plaintiff was heard by the local people, a complaint was lodged to the ACB. Subsequently, PCCF and CF (N) issued order to stop felling permit under No. B. 14017/17/94- PCCF/316 Dt. 24/4/95 and No. B. 16012/7/95- CF (N)/2721 – 23 Dt. 16/2/95 before felling permit was actually issued to the plaintiff.

*Ext. D-1 is Sketch Map showing B. Suarhliap 1976 Govt. Teak Plantation and 1981 Teak Plantation of Pu Sanghluna.*

*Ext. D-2 is the Plantation Journal of 1976 Govt. Teak Plantation at Bairabi Forest Beat*

*Ext. D-3 is the statement of H. Lalkaia*

*Ext. D-4 is the statement of R. Romawia*

*Ext. D-5 is the statement of T. Rohnuna*

*Ext. D-6 is the statement of C. Sanghluna Dt. 1.5.1993*

*Ext. D-7 is the statement of C. Sanghluna Dt. 15.5.1993*

*Ext. D-8 is the statement of C. Sanghluna Dt. 19.8.1997*

*Ext. D-9 is the statement of the plaintiff M. Lalvuana, Dt. 16.9.1998*

*Ext. D-10 is the list of families cultivating the 1976 Forest Teak Plantation.*

[Which were objected by learned counsels for the plaintiff]

In his cross examination, he deposed that Ext. D-2 Plantation Journal is maintained by the R.O. concerned. He admitted that the DCF (Hqrs) already issued a letter for permission to sale of teak trees outside the state of Mizoram in favour of the plaintiff Dt. 9.12.1994 pertaining to the suit land. He is not ascertained that whether any other private plantations existed in the vicinity of the suit land. He did not know the time for making of Plantation Journal in the suit land by denied that it was made at a belated stage for the purpose of winning the instant case.

For the defendant no. 5:

The defendant no. 5 also produced one witness namely- Mr. C. Sanghluna S/o Thangliana (L), Bairabi (Hereinafter referred to as DW- 2). He thereby deposed in his examination in chief that he is a resident of Bairabi by a profession of manual cultivation, Garden Permit No. 71 of 1963 was issued by the then District Council firstly in the name of his elder brother Mr. Tlanglawma and he was a child at that time. His parents lookafter the said land by cultivating fruit bearing crops/lemon trees and no one disturb its possession. After the deceased of his elder brother and his father in 1971 and 1974 respectively, without mutating the name of the owner, he look after the suit land and in the 1976, he planted around 500 number of teak trees and survived only 360 teak trees out of the same, his mother again died in 1984 and he being the only male in his siblings inherited the suit land without mutation. In 1988, as requested, he sold the said 360 teak trees to the plaintiff in consideration of Rs. 45,000/- excluding the land. The Forest Department never interfered at any cost before and after cultivating teak trees in the suit land. During marking of teak trees in favour of the plaintiff, being the owner of the suit land, he also present on the spot. He found that the Forest Department at a belated stage does not have a right to disturb the said teak trees.

During his cross examination by learned counsel for the plaintiff, he further deposed that in regards to his statements before the Officials of Forest Department, he clarified that during 1976, the Forest Department asked to cultivate teak trees in the suit land but they refused the same and during 1981 and after, they continued to cultivate teak trees in the suit land. Govt. Teak Plantation does not lying in the suit land and its surroundings. The map drawn by the Forest Department as per their desire is not acceptable. He remains continued to cultivate in the suit land without disturbance from any corner in a practical sense and also presently planted betel nut trees.

In his cross examination by learned counsel for the defendants 1-4, he deposed that at the threshold, the suit land was allotted by the District Council for the purpose of lemon plants. Although they cultivated lemons at

the beginning, due to famine of the said lemons, they continued to cultivate other plants. He also regularly paid taxes incurred on the suit land.

## **FINDINGS**

### **Issue No. 1 Cause of action**

The plaintiff by expending a huge amount of money had purchased teak trees and also obtained permission for felling and selling of the said Teak trees from the higher echelons of the defendants 1-4 but refused by the DFO, Kolasib for finalization of permit for felling and transit to outside the state must have a cause of action in the instant suit which is clearly depicted by evidences of both parties.

### **Issue No. 2 Court fees**

While the value of the suit is estimated at Rs. 45,000/- a court fees at Rs. 2973/- which is paid in full must be sufficient as per the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) although learned counsels for the plaintiff are silent on it even at the time of arguments.

### **Issue No. 3 Legal Notice**

This issue is not depicted by evidences and arguments advanced by learned counsel for the plaintiff, learned AGA for the defendants 1-4 argued that a relief sought in the plaint and legal notice is different and is bad in law. Let us therefore taken some observations to settle the matter. In the case of **Manindra Ch. Paul vs State Of Tripura And Ors.** decided on 16 March, 2007 and reported in AIR 2007 Gau 103, 2007 (3) GLT 300, the Gauhati High Court has held that-

“...14. That, it is also true that in a number of decisions the Hon'ble Apex Court and the different High Courts observed that notice under Section 80 of the Code of Civil Procedure is mandatory and pre condition to the filing of a suit against the Government and its officer, but keeping in mind that the object of giving notice under Section 80 of the Code of Civil Procedure is primarily to settle the matter prior to litigation and not to defeat the just claim of the public, I am of the considered view that if the notice has been given to the concerned necessary party in a proper way as required under Sub-section (1) of Section 80 of the Code of Civil Procedure, the requirement of service of notice upon the other parties like the State Government and others may be waived and on account of such technical defect the suit should not be allowed to defeat...”

Again in **Gopesh Chandra Das v. The Chief Secretary to the Government of Assam and Ors.** (1989) 2 GLR 377 : AIR 1990 Gau 74, the Gauhati High Court discussed the object of Section 80 of the Code of Civil Procedure Notice and the manner of its interpretation. In the said case, the High Court observed as follows:

“...The object of the notice contemplated by Section 80 is to give to the concerned Governments and public officers opportunity to reconsider the legal position and to make amends or settle the claim, if so advised, without litigation. The legislative intention behind that section is that public money and time should not be wasted on unnecessary litigation and the Government and the

public officers should be given a reasonable opportunity to examine the claim made against them lest they should be drawn into avoidable litigations. The purpose of law is advancement of justice. It must be remembered that Section 80 of the Code is but a part of the Procedure Code passed to provide the regulation, and machinery, by means of which the Court may do Justice between the parties. It is, therefore, merely a part of the adjective law and deals with procedure alone and must be interpreted in a manner so as to sub-serve and advance the cause of justice rather than to defeat it....”

And in **Manindra Ch. Paul vs State Of Tripura And Ors.** decided on 16 March, 2007 reported in AIR 2007 Gau 103, 2007 (3) GLT 300, the Gauhati High Court has observed that-

“...14. That, it is also true that in a number of decisions the Hon'ble Apex Court and the different High Courts observed that notice under Section 80 of the Code of Civil Procedure is mandatory and pre condition to the filing of a suit against the Government and its officer, but keeping in mind that the object of giving notice under Section 80 of the Code of Civil Procedure is primarily to settle the matter prior to litigation and not to defeat the just claim of the public, I am of the considered view that if the notice has been given to the concerned necessary party in a proper way as required under Sub-section (1) of Section 80 of the Code of Civil Procedure, the requirement of service of notice upon the other parties like the State Government and others may be waived and on account of such technical defect the suit should not be allowed to defeat. In the present case, the notice marked Exbt.-1, which was served on the respondent No. 2, contained the name, description and the residence of the appellant and also indicated the cause of action and the relief sought for in the suit. Thus, the said notice fulfilled all the conditions required under the law and by service of such notice upon the respondent No. 2, the requirement of service of notice under Section 80 of the Code of Civil Procedure has been substantially complied with. Hence, the dismissal of the suit by the learned Court below for non-service of notice upon other respondents is not maintainable in law and it goes against the advancement of doing justice.”

In the instant case, no doubt, the relief sought in the legal notice and in the plaint is slightly different whilst the defendants 1-4 also contested in the suit by denying all averments and submissions in the plaint. I therefore do not have a ground to dismiss of the suit on this aspect as legal notice is solely for the purpose of amicable settlement before institution of the suit which is not expected like in the instant case.

#### **Issue No. 4** **Non-joinder of necessary party**

In the arguments, learned counsel for the plaintiff fails to steak out this issue but positively dealt by arguments advanced by Ld. AGA for the defendants 1-4 saying that as per the provisions of the Forest (Conservation) Act, 1980, the Central Government is very essential for impleadment as a party. Without it like in the instant suit, the suit will be obviously liable to dismiss.

In this crux, horizon may be taken in the case of **Nature Lovers Movement Vs. State of Kerala & Ors.** and is reported in (2009) 5 SCC 373, the Supreme Court has held that-

"47. The ratio of the above noted judgments is that the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25-10-1980 i.e. the date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organisation which is not owned, managed or controlled by the Government.



48. Another principle which emerges from these judgments is that even if any forest land or any portion thereof has been used for non-forest purpose, like undertaking of mining activity for a particular length of time, prior to the enforcement of the 1980 Act, the tenure of such activity cannot be extended by way of renewal of lease or otherwise after 25-10-1980 without obtaining prior approval of the Central Government."

Repining that learned counsels for the plaintiff are not helpful in this catena and silent on it both in their evidences and arguments. If the claimed of the plaintiff be correct, Guidelines for felling of trees from non-forest areas, 2002 chalked out by the Govt. of Mizoram on the basis of the decisions of Hon'ble Supreme Court in WP(C) No. 202 of 1995 Dt. 12.5.2001 will be applicable which do not require the interference of Central Government. The terminology of 'forest' also denotes the interpretation made in **T.N. Godavarman Thirumulkpad Vs. Union of India & Ors.** decided on 12/12/1996 and reported in 1997 AIR 1228, 1996 (9) Suppl. SCR 982, 1997 (2) SCC 267, 1996 (9) SCALE 269, 1997 (10) JT 377.

Undisputedly, permission for felling of trees or collection of forest produce in the state of Mizoram is governed by Guidelines for felling of trees from non-forest areas, 2002 and the Mizoram (Forest) Act, 1955, transit pass is also governed by Para 8 of the Guidelines for felling of trees from non-forest areas, 2002 read with section 7 (2) of the Mizoram (Forest) Act, 1955 in the prescribed format in the Appendix.

Thus, the ratio laid down 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 is attracted like in the instant case, which says 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."

The above highlighted legal entity reveals that without the interference of the central government, the instant suit can be disposed of whilst the defendants 1-4 can carry out any order pass in the instant suit. The answer is therefore affirmative in favour of the plaintiff.

### **Issue No. 5**

#### **Teak trees within Govt. Plantation/Riverine reserved forest**

DW-1 who deposited for the defendant no. 5 but turned into the benefits of the plaintiff is vital who deposed that till this time, he occupied the suit land and no interference of other stranger or parties is arose whilst the competent authority like the then Mizo District Council issued Garden permit under No. 71 of 1963 marked as Ext. P-1 and also further regularly paid taxes for the same to the Government.

Whilst the defendants 1-4 are authorized to evict the unauthorized occupants of from reserved forest area u/s 29 E of the Mizoram (Forest) Act, 1955 read with Notification under No. D. 12012/5/'94-FST, the 18<sup>th</sup>

January, 2007 (Vide, the Mizoram Gazette, Extra Ordinary; Vol. XXXVI, 02-02-2007, Issue No. 12]. Meanwhile, evidence of the defendants 1-4 did not also spelt out any action taken by the defendants 1-4 to exercise the said power. Thus, the act of the defendants 1-4 must be estopped and principles of acquiescence is also attracted.

### **Issue No. 6**

#### **Teak trees within Permit No. 71 of 1963**

Although the defendants 1-4 alleged that the boundary description of Permit No. 71 of 1963 is vague also adduced in their evidence, no other evidences supplemented that the disputed teak trees were cultivated and grown outside the area covered by Garden Permit No. 71 of 1963. The claimed of the defendants 1-4 is rather the area covered by the said permit falls Govt. teak plantation area as Tlawng riverine reserve area. Thus, clear proof is that the disputed teaks trees were cultivated and grown in the area covered by Garden Permit No. 71 of 1963.

### **Issue No. 7**

#### **Entitlement of relief and it's extend**

As all the above issues were affirmative in favour of the plaintiff, I have no other option except to dispose of the suit in favour of the plaintiff. As it is a well settled law that relief can only be granted within the pleadings, the prayer of the plaintiff in his plaint is that (i) to declare the plaintiff as the rightful owner of the disputed teak trees within Permit No. 71 of 1963 located at B. Suarhliap (ii) a decree for enforcement of the approval of the Government for issuance of felling and transit pass in favour of the plaintiff Vide, No. B. 11020/4/94-FST Dt. 5/12/1994 and No. B. 14017/17/94- PCCF/279 Dt. 9/12/1994 communicated by the DCF (Headquarter) Office of the Principal Chief Conservator of Forest to the defendant No. 4 (iii) any other cost and relief which this court deems fit and proper.

### **ORDER**

On meticulously evaluating evidences of both parties, the plaintiff is declared as the rightful owner of the disputed teak trees within Permit No. 71 of 1963 located at B. Suarhliap in terms of the sale conditions if any with the vendor namely Mr. C. Sanghluna.

The defendants 1-4 are directed to revitalize and enforce of the approval of the Government for issuance of felling and transit pass in favour of the plaintiff Vide, No. B. 11020/4/94-FST Dt. 5/12/1994 and No. B. 14017/17/94- PCCF/279 Dt. 9/12/1994 communicated by the DCF (Headquarter) Office of the Principal Chief Conservator of Forest to the defendant No. 4 in accordance with the existing legal procedures.

At the last stage, costs of the suit is the essence of justice like in the instant case as very recently held in the case of **Vinod Seth vs Devinder Bajaj & Anr.** disposed of on 5 July, 2010 in connection with Civil Appeal

No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], their Lordship of Hon'ble Supreme Court has held that-

"23. The provision for costs is intended to achieve the following goals: (a) It should act as a deterrent to vexatious, frivolous and speculative litigations or defences. The spectre of being made liable to pay actual costs should be such, as to make every litigant think twice before putting forth a vexatious, frivolous or speculative claim or defence. (b) Costs should ensure that the provisions of the Code, Evidence Act and other laws governing procedure are scrupulously and strictly complied with and that parties do not adopt delaying tactics or mislead the court. (c) Costs should provide adequate indemnity to the successful litigant for the expenditure incurred by him for the litigation. This necessitates the award of actual costs of litigation as contrasted from nominal or fixed or unrealistic costs. (d) The provision for costs should be an incentive for each litigant to adopt alternative dispute resolution (ADR) processes and arrive at a settlement before the trial commences in most of the cases. In many other jurisdictions, in view of the existence of appropriate and adequate provisions for costs, the litigants are persuaded to settle nearly 90% of the civil suits before they come up to trial. (e) The provisions relating to costs should not however obstruct access to courts and justice. Under no circumstances the costs should be a deterrent, to a citizen with a genuine or bonafide claim, or to any person belonging to the weaker sections whose rights have been affected, from approaching the courts."

In **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** in connection with Writ Petition (civil) 496 of 2002 decided on 02/08/2005 reported in 2005 AIR 3353, 2005 (1) Suppl. SCR 929, 2005 (6) SCC 344, 2005 (6) SCALE 26, 2005 (6) JT 486, the Hon'ble Apex Court held that-

"...The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation."

By showing more lenience to the defendants, the defendants 1-4 are further directed to pay only costs of lawyers fee and court fee at Rs. 12,973/- (Rs. 10,000/- for lawyers fee + Rs. 2973/- for court fees) to the plaintiff with an interest rate at 12% per annum from this day.

Before parting with the case but pertinently, learned counsel for the defendants 1-4 prepared written arguments on the basis of various issues which is much helpful for adjudicating the case which learned counsels for the plaintiff fails to do so.

Give this copy to all concerned including decree.

**Dr. H.T.C. LALRINCHHANA**  
Senior Civil Judge- 2  
Aizawl District: Aizawl

Memo No. CS/1/1999, Sr. CJ (A)/

Dated Aizawl, the 18<sup>th</sup> May, 2011

Copy to:

1. Mr. M. Lalvuana S/o Thanghlira (L), Chanmari- Aizawl through Mr. C. Lalramzauva, Sr. Advocate
2. The State of Mizoram Through the Chief Secretary to the Government of Mizoram through Mr. Lalramhluna, Adv.

3. The Secretary to the Govt. of Mizoram, Environment & Forest Department through Mr. Lalramhluna, Adv.
4. The Principal Chief Conservator of Forest, Govt. of Mizoram, Mizoram-Aizawl through Mr. Lalramhluna, Adv.
5. The Divisional Forest Officer, Kolasib Forest Division, Kolasib- Mizoram through Mr. Lalramhluna, Adv.
6. Mr. C. Sanghluna S/o Tlanglawma (L), B. Suarhliap- Mizoram
7. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District-Aizawl
8. Case record

PESKAR