

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

CIVIL SUIT NO. 04 OF 1998

Plaintiff:

The Secretary to the Govt. of Mizoram  
Public Works Department  
Mizoram- Aizawl

*By Advocate's* : Mr. R. Lalremruata, AGA

*Versus*

Defendant's:

Mr. R. Zaihmingthanga  
Laipuitlang  
Aizawl- Mizoram

Date of Judgment & Order : 27-05 -2011

**BEFORE**

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

**JUDGMENT & ORDER**

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**GENESIS OF THE CASE**

This is a suit for title and recovery of peaceful possession of the land under DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 with an area of 25.26 Bighas issued by the Revenue Authorities. The plaintiff thereby constructed many residential quarters and other buildings in the suit land. The defendant is therefore alleged to obtain LSC No. AZL. 207/95 fraudulently over the suit land which is covered by the said DPL No. 30 of 1985 belonging to the plaintiff and no objections from the neighbours like the plaintiff was not also obtained for issuance of the said impugned LSC. The surveyed conducted by Mr. V. Lianzinga, Asst. Director of Revenue Department also reveals that LSC No. AZL. 207/95 belonging to the defendant fell within the land covered by DPL No. 30 of 1985. Being the older valid landed pass, the plaintiff therefore prays that (i) a decree for declaring the LSC No. AZL. 207/95 belonging to the defendant illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff (ii) a decree for possession be passed in favour of the plaintiff and against the defendant in the suit land (iii) a decree for declaring that LSC No. AZL. 207/95 belonging to the defendant is null and void as it illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff (iv) costs of the suit in favour of the

plaintiff and against the defendant and (v) any other orders which this court deems fit and proper.

Whilst the suit is instituted on 6/5/1998, the defendant neither appear nor file written statements till 24/3/2011 without knowing reasons while it is ascertained that summons were duly served to the defendant evident by engaging with learned advocate by the defendant namely Mr. A. Hussain. Thus, by virtue of O. VIII, R. 10 of the CPC, the case is proceeded without written statement of the defendant. It is therefore axiomatic that written statement should be filed within thirty day from the date of service of summons (including duplicate copy of plaint) but extendable for another sixty days with speaking orders. It is further permissible to expand time frame exceeding ninety days where and when exceptional and rare cases/circumstances which I do not find in the instant case. As observed in **Smt. Sudha Devi Vs. M.P. Narayanan & Ors.** decided on 26/04/1988 reported in 1988 AIR 1381, 1988 (3) SCR 756, 1988 (3) SCC 366, 1988 (1) SCALE 952, 1988 (2) JT 217, it was held that-

“Even in absence of a defence the court cannot pass an ex-parte decree without reliable relevant evidence. The fact that the plaintiff chose to examine some evidence in the case cannot by itself entitle her to a decree.”

It is decided to take evidence of the plaintiff in the instant proceedings although ex-parte proceeding of the case.

### POINTS FOR DETERMINATION

By making reliance in **Ramesh Chand Ardawatiya vs Anil Panjwani** decided on 5 May, 2003 reported in AIR 2003 SC 2508, 2003 (4) ALD 10 SC, wherein, the Supreme Court has held that-

“33. So far as the plea of bar as to maintainability of suit for failure to seek further relief is concerned, we cannot find fault with the plaint as framed. The defendant was alleged to be a rank trespasser who was in the process of committing a trespass and was allegedly raising unauthorized construction over the property neither owned nor legally possessed by him. The relief of specific performance is not a further relief to which the plaintiff is entitled or which he could have sought for against this defendant. Thus, from the point of view of the present defendant, we cannot find any such defect or infirmity in the relief sought for by the plaintiff as would render the suit not maintainable and liable to be thrown out at the threshold. But there is substance in the other limb of this submission made by the learned senior counsel for the defendant-appellant. Even if the suit proceeds ex-parte and in the absence of a written statement, unless the applicability of Order VIII Rule 10 of the CPC is attracted and the Court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the Court cannot be dispensed with. In the absence of denial of plaint averments the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the Court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex-parte the Court is not bound to frame issues under Order XIV and deliver the judgment on every issue as required by Order XX Rule 5. Yet the Trial Court would scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the 'point for determination' and proceed to construct the ex-parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the Court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence.”

The following points for determination were chalked out on 19/4/2011 such as-

1. Whether the plaintiff has a cause of action against the defendant

2. Whether DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 is issued legally and validly to the plaintiff
3. Whether LSC No. AZL. 207/95 is liable to null and void
4. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

### **BRIEF ACCOUNT OF EVIDENCE**

The plaintiff had produced only one witness namely- Smt. Lalhrangliani, Under Secretary to the Govt. of Mizoram, Revenue Department (Hereinafter referred to her as PW), she deposed that the competent authority allotted a land under DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 with an area of 25.26 Bighas and the plaintiff thereby constructed residential quarters in the said suit land. Fraudulently and illegally, the defendant had obtained LSC NO. AZL. 207/95 which overlapped the land covered by DPL No. 30 of 1985 belonging to the plaintiff. Without obtaining no –objections from the plaintiff as neighbor, the said LSC NO. AZL. 207/95 was issued in favour of the defendant. Thus, prayed to declare LSC NO. AZL. 207/95 is null and void.

Although given a chance for cross examination, none appears from the defendant to cross examine of the said PW. Indeed, in the proceedings, the defendant betrayed the proceedings even to appear in the court although engaged with Mr. A. Hussain, learned advocate as his lawyer.

### **FINDINGS**

#### **Point No. 1**

#### **Cause of action**

The plaintiff is the holder of DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 and also utilized the said land by constructing and occupying residential quarters which is overlapped by LSC NO. AZL. 207/95 lately issued in favour of the defendant. Thus, I find a prima facie case/cause of action in the instant suit.

#### **Point No. 2**

#### **Entity of DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985**

A copy of DPL No. 30 of 1985 under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 is filed alongwith the plaint, on meticulously examining its entirety whilst the plaintiff utilized the said land by constructing residential quarters and also occupying the suit land. Whilst the defendant does not contest in the suit. the instant points should also goes in favour of the plaintiff.

**Point No. 3**

**Whether LSC NO. AZL. 207/95 is liable to null and void**

In this point, cogently, DPL No. 30 of 1985 was issued under Memo No. LRR/B-27/83-85/20 (A) Dated Aizawl, the 12.07.1985 but issued LSC No. AZL. 207/95 during 1995 and is ascertained that the said LSC No. AZL. 207/95 overlapped the land covered by DPL No. 30 of 1985 at Laipuitlang-Aizawl. I must uphold that the older landed documents for holding of land must be precedent over to the later landed documents while overlapping of the land with a simple and obvious reason that without it, one may corruptly and fraudulently obtain landed documents by concealing of the facts habitually which is inimical to social values and ethics whilst right to property remains the constitutional rights under Article 300A of the Constitution of India. The inevitable finding is that LSC No. AZL. 207/95 belonging to the defendant is liable to null and void.

**Point No. 4**

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

As all the above points 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) a decree for declaring the LSC No. AZL. 207/95 belonging to the defendant illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff (ii) a decree for possession be passed in favour of the plaintiff and against the defendant in the suit land (iii) a decree for declaring that LSC No. AZL. 207/95 belonging to the defendant is null and void as it illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff (iv) costs of the suit in favour of the plaintiff and against the defendant and (v) any other orders which this court deems fit and proper.

**ORDER**

In view of the above inevitable findings, I hereby ordered and decreed that –

- (1) LSC No. AZL. 207/95 belonging to the defendant illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff
- (2) The defendant is directed to vacate the suit land by leaving peacefully for the possession of the plaintiff by dismantling any building by the defendant and to collect all the materials of the same if any within six months from the date of this order.
- (3) LSC No. AZL. 207/95 belonging to the defendant is null and void as it illegally and fraudulently overlapped the area covered by DPL No. 30 of 1985 belonging to the plaintiff. The plaintiff has a right to approach the Revenue authorities to obtain a separate notification for the cancellation/null and void of the said LSC No. AZL. 207/95

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 lenience to the defendant, there will be no order as to costs.

Give this copy to all concerned including decree.

**Dr. H.T.C. LALRINCHHANA**

Senior Civil Judge- 2  
Aizawl District: Aizawl

Memo No. CS/4/1998, Sr. CJ (A)/

Dated Aizawl, the 27<sup>th</sup> May, 2011

Copy to:

1. The Secretary to the Govt. of Mizoram, Public Works Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
2. Mr. R. Zaihmingthanga, Laipuitlang, Aizawl- Mizoram through Mr. R. Lalremruata, AGA
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR