

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

TITLE SUIT NO. 16 OF 2007

Plaintiffs:

1. Smt. Lalremsangi @ Remsangi
D/o L. Thangvela
Keifang, Aizawl District
2. Mr. Thanzuala
S/o Vana (L)
Zemabawk, Aizawl

By Advocates

- : 1. Mr. B. Lalramenga
2. Mr. Reuben L. Tochhawng
3. Mr. J.C. Lalnunsanga

Versus

Defendants:

1. The Secretary to the Govt. of Mizoram
Revenue Department
2. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
3. The Assistant Settlement Officer - I
Aizawl District: Aizawl
Land Revenue and Settlement Department
Govt. of Mizoram
4. The Assistant Settlement Officer - II
Aizawl District: Aizawl
Land Revenue and Settlement Department
Govt. of Mizoram
5. Mr. Zahlira
S/o Sena
Khatla South, Aizawl
6. Mr. R. Lalhruaitluanga
S/o Zahlira (L)
Khatla South, Aizawl

By Advocates

:

For the defendants 1-4

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

For the defendant No. 8 :

Date of Arguments : 03-11-2011

Date of Judgment & Order : 08-11-2011

BEFORE

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

JUDGMENT & ORDER

BRIEF STORY OF THE CASE

During 1997, the government of Mizoram made house site plan revision at Zemabawk Lungbial (Huapzo) area. The plot no. 148 of the said revised plan was allotted to the plaintiff no. 2 under Order No. K-19011/12/2001- REV, Dt. 10.12.2002 and thereby issued House Pass No. 430 of 2003 on 10.12.2002 under Memo No. R-14011/Provisional/97- DC (A) Dt. 5.6.2003 with an area of 350.00 Sq. m. to the plaintiff no. 2. It was again converted into LSC No. 103101/01/1760 of 2006 with an area of 345.40 Sq. m. in favour of the plaintiff no. 2 on 13.7.2006 with the approval of the government of Mizoram dt. 14/6/2006. As the defendants 1-4 later found that in the suit land, LSC No. Azl. 906 of 1991 with an area of 222.75 Sq. m in favour of the defendant no. 5 and LSC No. Azl. 905 of 1991 in favour of the defendant no. 6 with an area of 222.75 Sq.m were already existed, after hearing of parties, the state defendants conveyed an order under No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006 for cancellation of the LSC No. 103101/01/1760 of 2006 belonging to the plaintiffs. Eviction notice was thereby served to the plaintiffs under No. R. 21011/06- DC (A)/37, Dated Aizawl, the 27th Sept., 2006. Furthermore, show cause notice why the house constructed in the suit land should not be dismantled was again issued by the state defendants under Memo No. C. 13016/N-41/03- DISP/DTE (REV), Dated Aizawl, the 5th Dec., 2006. Thereafter, the plaintiff no. 1 was directed to dismantle her constructed house in the suit land by the state defendants under Memo No. R. 21011/11/06- DC (A)/124, Dated Aizawl, the 10th July, 2007. The plaintiff no. 1 was further directed to dismantle her building in the suit land by giving a chance for her own collection till 24.8.2007. Failing on which, forceful dismantling of her house in the suit land as issued under Memo No. R. 21011/11/06- DC (A)/131, Dated Aizawl, the 6th August, 2007. The plaintiffs therefore prays that- (i) a decree declaring that the Order No. C. 18016/12/2003-Rev./Pt. Dt. 11.8.2006 by which the LSC of the plaintiffs was cancelled and order No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006 and any subsequent orders by which the said cancellation order is being conveyed are illegal and invalid and to set aside; (ii) a decree declaring that the Eviction Notice under No. R. 21011/06- DC (A)/37, Dated Aizawl, the 27th Sept., 2006 by which the plaintiffs are urged to vacate the suit land and to demolish the suit house and any other subsequent order to this effect is illegal and invalid and set aside; (iii) a decree declaring that the order No. R. 21011/11/06- DC (A)/124, Dated Aizawl, the 10th July, 2007 and order No. R. 21011/11/06- DC (A)/131, Dated Aizawl, the 6th August, 2007 for demolition of the suit house are illegal and invalid and set aside; (iv) a decree declaring that the House Pass No. 149 of 1990 and the LSC No. Azl. 905 of 1991 and LSC No. 906 of 1991 are illegal and invalid and set aside; (v) for a decree declaring that the plaintiffs have right, title and ownership over the LSC No. 103101/01/1760 of 2006 out of the House Pass No. 430 of 2003; (vi) for cost of the suit and (vii) for any other relief/reliefs this court may deem fit and proper.

The defendants 1-4 in their written statements submitted that in pursuance to the order dt. 12.5.2006, spot verification was conducted by the Surveyor and found that the LSCs of the defendants 5 and 6 under No. Azl.- 905 of 1991 and 906 of 1991 are being overlapped by the plaintiffs House Pass No. 430/03. In the survey report basis, show cause notice as to why the LSC of the plaintiff should not be cancelled was issued. Being the older LSCs of the defendants 5 and 6, it will prevail over to the LSC of the plaintiffs. While the dispute section processed the matter of House Pass No. 430 of 2003, by concealing such matter, the plaintiffs applied for conversion into LSC. The spot verification also reveals that Assam Type House was constructed in the suit land by the plaintiff in the suit land. They therefore prayed to dismiss of the suit.

The defendants 5 and 6 in their written statements also stated that their LSCs under No. Azl.- 905 of 1991 and 906 of 1991 are being overlapped by the plaintiffs House Pass No. 430/03. Meanwhile, Being the older LSCs of the defendants 5 and 6, it will prevail over to the LSC of the plaintiffs. They therefore prayed to dismiss of the suit.

ISSUES

The following issues were framed on 11/8/2008 and amended towards correct adjudications, and in the amended form are such as-

1. Whether the suit is maintainable or not
2. Whether the suit is bad for non-joinder of necessary parties
3. Whether the plaintiff has cause of action/locus standi to institute the instant suit or not.
4. Whether an Order No. C. 18016/12/2003-Rev./Pt. Dt. 11.8.2006 by which the LSC of the plaintiffs was cancelled and order No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006 and any subsequent orders by which the said cancellation order is being conveyed are illegal and invalid and liable to set aside or not.
5. Whether Eviction Notice under No. R. 21011/06- DC (A)/37, Dated Aizawl, the 27th Sept., 2006 by which the plaintiffs are urged to vacate the suit land and to demolish the suit house and any other subsequent order to this effect is illegal and invalid and liable to set aside or not.
6. Whether an order No. R. 21011/11/06- DC (A)/124, Dated Aizawl, the 10th July, 2007 and order No. R. 21011/11/06- DC (A)/131, Dated Aizawl, the 6th August, 2007 for demolition of the suit house of the plaintiffs are illegal and invalid and liable set aside or not.
7. Whether the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 are illegal and invalid and liable to set aside or not.
8. Whether the plaintiffs have right, title and ownership over the LSC No. 103101/01/1760 of 2006 out of the House Pass No. 430 of 2003 or not.
9. Whether the plaintiffs are entitled to the relief which they claimed or not. If so to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Smt. Lalremsangi D/o Thangvela, Keifang, Saitual, Aizawl District (Hereinafter referred to as PW-1)
2. Mr. Thanzuala S/o Vana (L), Zembawk, Aizawl (Hereinafter referred to as PW-2)
3. Mr. Isaac Hmar S/o L. Thangvela, Chanmari- Aizawl (Hereinafter referred to as PW-3)

The **PW- 1** in her examination in chief deposed that she is the plaintiff no. 1, when Revisional house site was processed in the area of the suit land by the government, notice was given three times asking those who had house passes to report to the defendant no. 2, failing on which, their land passes will be cancelled by making fresh allotment in the land. Plot No. 148 of the said revised plan was allotted to the plaintiff no. 2 and his pass as No. 430 of 2003 and later converted into LSC. The plaintiff no. 2 allowed her to construct a house in the suit land and thereafter she had purchased the suit land from the plaintiff no. 2. She had also submitted reply to the state defendants in their show cause notice. She further deposed that-

Ext. P-1 is plaint
Ext. P-1 (a) and (b) were her true signatures
Ext. P-2 is a copy of Hriattirna Dt. 13.8.2007
Ext. P-3 is a letter of Hriattirna Dt. 19/4/2006
Ext. P-4 is a copy of House site plan
Ext. P-5 is a copy of House Pass No. 430 of 2003
Ext. P-6 is a copy of LSC No. 103101/01/1760 of 2006
Ext. P-7 is Non-encumbrance certificate in LSC No. 103101/01/1760 of 2006
Ext. P-8 is land valuation certificate in LSC No. 103101/01/1760 of 2006
Ext. P-9 is No-Objection Certificate in LSC No. 103101/01/1760 of 2006
Ext. P-10 is Boundary description of LSC No. 103101/01/1760 of 2006
Ext. P-11 is a copy of order dt. 1/5/2006
Ext. P-12 is a copy of order dt. 19/5/2006
Ext. P- 12 (a) is his true signature
Ext. P-13 is a copy of Show Cause Notice dt. 6/6/2006
Ext. P-14 is Show Cause reply
Ext. P-15 is a copy of order dt. 25/9/2006
Ext. P-16 is a copy of eviction notice dt. 27/9/2006
Ext. P- 17 is a copy of their joint representation dt. 9/10/2006
Ext. P- 18 is a copy of Show Cause reply dt. 5/12/06
Ext. P- 19 is a copy of Show Cause reply
Ext. P-19 (a) is her signature
Ext. P- 20 is a copy of letter dt. 10.7.2007 from deft. No. 3
Ext. P- 21 is a copy of letter dt. 26/7/2007 issued by ASO-I
Ext. P- 22 is a copy of Notice Dt. 6/8/2007
Ext. P- 23 is Authorization letter dt. 28/8/2007 to file a suit
Ext. P- 24 is a copy of LSC No. Azl. 906 of 1991
Ext. P- 25 is Boundary description in LSC No. Azl. 906 of 1991
Ext. P- 26 is a copy of House site plan of LSC No. Azl. 906 of 1991
Ext. P- 27 is a copy of LSC No. Azl. 905 of 1991
Ext. P- 28 is Boundary description in LSC No. Azl. 905 of 1991
Ext. P- 29 is a copy of House site plan of LSC No. Azl. 905 of 1991

The **PW- 2** in his examination in chief deposed that when Revisional house site was processed in the area of the suit land by the government, notice was given three times asking those who had house passes to report to the defendant no. 2, failing on which, their land passes will be cancelled

by making fresh allotment in the land. Plot No. 148 of the said revised plan was allotted to him and his pass was No. 430 of 2003 and later converted into LSC. He sold the suit land to the plaintiff no. 1 in consideration of Rs. 40,000/-. He further deposed that-

Ext. P-5 is a copy of House Pass No. 430 of 2003

Ext. P-6 is a copy of LSC No. 103101/01/1760 of 2006

Ext. P-14 is Show Cause reply

Ext. P- 17 is a copy of their joint representation dt. 9/10/2006

Ext. P-17 (b) is his signature

Ext. P- 23 is Authorization letter dt. 28/8/2007 to file a suit

Ext. P- 23 (a) is his true signature

In his cross examination, he further deposed that he stayed at Zemabawk for about 53 years. As recommended by the Village Council of Zemabawk, the obtained the instant House pass later converted into LSC. There is no sale deed/letter in the plaint in between himself and the plaintiff no. 1. He admitted that the LSCs of defendants 5 and 6 are older than his House Pass and LSC.

The **PW- 3** in his examination in chief deposed that he witnessed that when Revisional house site was processed in the area of the suit land by the government, notice was given three times asking those who had house passes to report to the defendant no. 2, failing on which, their land passes will be cancelled by making fresh allotment in the land. Plot No. 148 of the said revised plan was allotted to the plaintiff no. 2 and his pass was No. 430 of 2003 and later converted into LSC. He further witnessed the process and orders of the defendants about the suit land.

In his cross examination, he simply denied that the LSC/House Pass of the plaintiff was issued illegal.

For the defendants 1-4:

The defendants 1-4 had also produced only one witness namely- Mr. Lalthuamluaia, Surveyor, Land Revenue and Settlement Department (Hereinafter referred to as DW for depts 5 & 6). In his examination in chief, he deposed that on 28.03.2007, he went to the disputed land for verification and found that the Assam type building of the plaintiff no. 1 18 x 12 is being constructed within the LSCs of the defendants 5 and 6. An order for cancellation of the LSC of the plaintiff and removal/demolition of the said building was made accordingly. He further deposed that-

Ext. D-1 is written statement

Ext. D-1 (a) is the signature of Pu. K. Lalhmingliana, the then Under Secretary to the Govt. of Mizoram, Revenue Department

Ext. D-2 is a report of Pu. F. Lalmachhuana, Surveyor-II

Ext. D-3 is the show cause notice dt. 5.12.2006

Ext. D-4 is the order of Director dt. 8.9.2006

Ext. D-5 is the approval of cancellation of the LSC of the plaintiff

Ext. D-6 is his report

Ext. D-6 (a) is his signature

Ext. D- 7 is letter of U/S to Govt. of Mizoram, Revenue Department dt. 5.6.2007

In his cross examination, he admitted that he did not aware of the Hriattirna for cancellation of House passes over to the suit land unless reported to the Revenue authorities in the stipulated period of time. He also

admitted that he did not aware of the existence of the LSC of the plaintiff and its entity.

The other defendants fails to produce their evidence.

POINTS OF RIVALRY

Mr. B. Lalramenga, learned counsel for the plaintiffs had taken reliance in the Ext. P- 2 wherein those who had house passes to report to the defendant no. 2 by attending on the spot with their passes on 12th Sept., 1997 at 11:00 A.M., for the purpose of house site plan revision, failing on which, their land passes will be cancelled by making fresh allotment in the land. Mr. B. Lalramenga further added that the plaintiff fails to comply the said notice and thereby issued House Pass and later LSC in favour of the plaintiff no. 2. The defendants are therefore barred by doctrine of estoppels.

On the other hand, Miss Bobita Lalhmingmawii, learned AGA for the defendants 1-4 after shorting down of the brief story and delving of evidences argued that the mode of alleged purchasing the suit land of the plaintiff no. 2 by the plaintiff 1 is also doubtful without accompanied by any valid sale deed. There can be no cause of action in favour of the plaintiff no. 1 to sue. More so, as older LSCs of the defendants 5 and 6, there can be no chances to uphold the validity of the LSC of the plaintiffs.

FINDINGS

Issue No. 1

Maintainability of the suit

The plaint is property drafted, accompanied by Verification duly signed by the plaintiff. A requisite court fees is also paid by the plaintiff. With regards to prior legal notice to the defendant, as per the order passed on 30.8.2007 in Misc J. No. 63 of 2007, the plaintiffs are allowed to file the suit directly by virtue of S. 80 (2) of the Code of Civil Procedure, 1908. Thus, I find no irregularities which can vitiate the proceedings.

Issue No. 2

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

In the instant case, the State of Mizoram is not impleaded as the defendant but directly put the Secretary to the Govt. of Mizoram, Revenue Department as the defendant no. 1 while challenging the decisions of the Government of Mizoram for cancellation of the LSC of the plaintiffs. In this connection, the law laid down by the Hon'ble Gauhati High Court in the case of **Commissioner -cum-Secretary & Ors vs. T.C. Syndicate & Ors** reported in **2011 (2) GLT 12** in paragraphs 35 & 36 is relevant, it reads thus-

“A combined reading of the statutory provisions prescribed by sections 79 and Order 27 Rule 3 and 5A CPC makes it abundantly clear that in suits against State Government or its officers, for any official act or the “State” is required to be added as a party to the suit. Though section 80 CPC has provided that issuance of notice to “the Secretary to the Government” or “the Collector of the District” in case of claim relief against the Government is sufficient compliance, the provisions prescribed by Section 79 and Order 27 as aforesaid, make it **mandatory** that the concerned State should be added as a defendant,” (para 35).

“In the present case before us, the plaintiffs have not added “the State of Arunachal Pradesh” as a defendant. Though the Commissioner cum Secretary, Department of Power, Govt. of Arunachal Pradesh, Itanagar was added as defendant No. 1, there is nothing to find that he was added as a representative of the State Government. . . . Therefore, as the Government i.e. the State of Arunachal Pradesh has not been joined as a party, the suits are apparently hit by the statutory provisions of Section 79 and Order 79 Rule 3 & Rule 5A of CPC and as such the same are **not maintainable** in the eye of law,” (para 36).

Even a casual glance at the plaint, it is seen that the State of Mizoram is not added as a party/defendant. The suit is therefore bad for non-joinder of necessary parties as exclude the State of Mizoram as the defendant.

Issue No. 3

Whether the plaintiff has cause of action/locus standi to institute the instant suit or not.

With regards to the concept of cause of action, reliance may be taken as held 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, their Lordship of Hon’ble Supreme Court has held 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 regards to the transfer of the LSC of the plaintiff no. 2 to the plaintiff no. 1, Section 14 of the Mizo District (Land and Revenue) Act, 1956 imposed conditions even in any transferable land such as-

“14. Transfer of ownership of Land: No transfer of any right, title or interest in any land shall be recognized by the Government or the Village Council and no person shall be deemed to be exonerated from any liability due to the Government or the Village Council by virtue of such transfer, unless such transfer is registered in the office of the Government in the manner prescribed.”

Rule 25 of the Mizo District (Land and Revenue) Rules, 1967 further stringent that-

“25. Transfer of Land:

If a settlement-holder or a lessee wants to transfer his land partly or wholly to another person or body, he shall apply for the same, and, if, nothing is found against his doing so in the terms and conditions of his certificate, the same shall be effected in the register and in the certificate on payment of mutation fee of Rs. 10/. If the transfer of

land is in part, and requires new certificate, the person to whom the new certificate is to be issued, shall pay registration fee of Rs. 10/- and certificate fee of Rs. 5/- under Rules 21 and 22 in addition to the mutation fee paid by the former settlement-holder. In the case of transfer of land from a tribal to a non-tribal and from a non-tribal to another non-tribal, the relevant provision of the Mizo District (Transfer of Land) Act, 1963, shall apply in addition to the fees payable under this Rule.”

Howsoever, as Ext. P- 23 clearly indicated that the plaintiff no. 2 authorised the plaintiff no. 1 to file the suit and proceed accordingly on behalf of the plaintiff no. 2 who is the holder of LSC No. 103101/01/1760 of 2006 in the suit land.

Being the holder of LSC No. 103101/01/1760 of 2006 in the suit land issued by the competent authority and constructed Assam type building therein and again overlapped with the LSCs of the defendants 5 and 6, I find that there is cause of action in favour of the plaintiffs and against the defendants.

Issue No. 4

Whether an Order No. C. 18016/12/2003-Rev./Pt. Dt. 11.8.2006 by which the LSC of the plaintiffs was cancelled and order No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006 and any subsequent orders by which the said cancellation order is being conveyed are illegal and invalid and liable to set aside or not.

Undisputedly, for making cancellation of the LSC No. 103101/01/1760 of 2006 belonging to the plaintiff no. 2, spot verification was duly made, a report thereof was perused and also called upon the plaintiffs to make an objections. After meticulously examining the spot verification report submitted by the Surveyor, show cause reply of the plaintiff. An order under No. C. 18016/12/2003-Rev./Pt. Dt. 11.8.2006 by which the LSC of the plaintiffs was cancelled and order No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006 was made. There is no violation of natural justice like ‘Audi alteram partem’. There is no arbitrariness and capriciousness for making such order. The glaring guidelines is already settled in the case of **Tata Cellular vs Union Of India** decided on 26 July, 1994 reported in 1996 AIR 11, 1994 SCC (6) 651, the Supreme Court has observed that-

“Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality: This means the decision- maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesday unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.”

Admittedly, the LSCs of the defendants 5 and 6 under No. Azl.- 905 of 1991 and 906 of 1991 are being overlapped by the plaintiffs House Pass No. 430/03 (Now converted into LSC No. 103101/01/1760 of 2006). As the

plaintiff no. 2 in his cross examination as PW-2 also admitted that his LSC No. 103101/01/1760 of 2006/House Pass No. 430 of 2003 is junior than the LSCs of the defendants 5 and 6 under No. Azl.- 905 of 1991 and 906 of 1991. I find no grounds to intrude in the decisions made in order under No. C. 18016/12/2003-Rev./Pt. Dt. 11.8.2006 by which the LSC of the plaintiffs was cancelled and order No. R. 21011/11/06- DC (A)/33, Dated Aizawl, the 25th Sept., 2006.

Issue No. 5

Whether Eviction Notice under No. R. 21011/06- DC (A)/37, Dated Aizawl, the 27th Sept., 2006 by which the plaintiffs are urged to vacate the suit land and to demolish the suit house and any other subsequent order to this effect is illegal and invalid and liable to set aside or not.

Eviction Notice under No. R. 21011/06- DC (A)/37, Dated Aizawl, the 27th Sept., 2006 is marked as Ext. P- 16 made on the basis of the findings under issue no. 4 above. Rule 40 of the Mizo District (Land and Revenue) Rules, 1967 is relevant in this crux, it is excerpted that -

“40. Eviction and Demolition:

- (a) When a person whose certificate of land Settlement has been cancelled under Rule 39, or when a person who has no Pass or Permit or permission of any form is found to have extended the area of his settled-land without permission, or when a person is found to have extended his existing building or erected a new building against the public interest in the opinion of the authority under these Rules, the Executive Member or the Officer may evict such person or order such extension or new building to be demolished by serving a notice to that effect specifying a date during which the person concerned, shall vacate the site or demolished the extension of building.
- (b) If the person concerned fails to vacate the site or fail to demolish the extensions or building within the time specified in the notice, or has not taken steps to prefer an appeal within the time specified thereof, the Executive Member or the Officer duly authorized, may order for the eviction or demolition by force. In such cases, a requisition for the services of the police may be sent to the Deputy Commissioner who will generally comply with such requisition, unless he considers the compliance is not possible for any special reason.”

This issue is therefore decided in favour of the defendants as the provision itself speaks and as per the findings under issue no. 4.

Issue No. 6

Whether an order No. R. 21011/11/06- DC (A)/124, Dated Aizawl, the 10th July, 2007 and order No. R. 21011/11/06- DC (A)/131, Dated Aizawl, the 6th August, 2007 for demolition of the suit house of the plaintiffs are illegal and invalid and liable set aside or not.

To shorten the discussions, whether an order No. R. 21011/11/06- DC (A)/124, Dated Aizawl, the 10th July, 2007 and order No. R. 21011/11/06- DC (A)/131, Dated Aizawl, the 6th August, 2007 for demolition of the suit house of the plaintiffs are illegal and invalid or not will be answered clearly by the provisions of Rule 40 of the Mizo District (Land and Revenue) Rules, 1967 as already extracted under issue no. 6. No more elaborations will obviously require.

Issue No. 7

Whether the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 are illegal and invalid and liable to set aside or not.

Since, the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 located in the suit land are admittedly senior than the House Pass No. 430/2003 (Now converted into LSC No. 103101/01/1760 of 2006) belonging to the plaintiffs, I find no reasons to hold that the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 are illegal and invalid and liable to set aside.

Issue No. 8

Whether the plaintiffs have right, title and ownership over the LSC No. 103101/01/1760 of 2006 out of the House Pass No. 430 of 2003 or not.

Since, the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 located in the suit land are admittedly senior than the House Pass No. 430/2003 (Now converted into LSC No. 103101/01/1760 of 2006) belonging to the plaintiffs, I find no reasons to hold that the LSC No. Azl. 905 of 1991 belonging to the defendant no. 6 and LSC No. 906 of 1991 belonging to the defendant no. 5 are illegal and invalid and liable to set aside. I therefore fails to see and hold that the plaintiffs have right, title and ownership over the LSC No. 103101/01/1760 of 2006 out of the House Pass No. 430 of 2003.

Issue No. 9

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

As lengthy discussions on the above, I find that the plaintiffs will have no entitle any relief which they sought in the plaint. The observations of the Hon'ble Supreme Court will answer the conclusions and decisions of the instant case as held in **Sainath Mandir Trust vs Vijaya & Ors** decided on 13 December, 2010 in connection with Civil Appeal No. 3030 of 2004, the Supreme Court has held that-

“The Courts below also failed to take into consideration that the suit was bad for non- joinder of necessary parties in terms of Order XXXI Rule 2 of C.P.C. as all the trustees of the Trust were not joined as parties and hence the Trial Court was clearly justified in dismissing the suit as not maintainable for want of necessary permission of the Charity Commissioner under Sections 50 and 51 of the Act as well as non-joinder of all the trustees in terms of Order XXXI Rule 2 of the C.P.C. It was also submitted that the appellant-trust has been in uninterrupted possession of the suit land since 31.1.1974 and the suit property in question had already been included and recorded by the Charity Commissioner as a property of the trust and the Change Report to that effect was required in terms of Section 22 of the Bombay Public Trusts Act. It was finally submitted that the property in question was gifted for a pious purpose of construction of 'Bhakta Niwas' and, therefore, considering the aforesaid factors and the comparative hardships to the parties, the suit for possession is not only fit to be

dismissed on the ground of its maintainability but even on the merits of the matter.”

The suit is therefore liable to dismiss on merit and lack of maintainability like non-joinder of necessary parties.

ORDER

UPON appreciating evidences adduced during the proceedings and as per the findings discussed as above, it is hereby ORDERED that the suit is dismissed on merit and maintainability.

Parties are directed to bear their own costs, the case shall stand disposed of accordingly.

Give this copy to both parties and all concerned.

Given under my hand and seal of this court on this 8th November, 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/16/2007, Sr. CJ (A)/

Dated Aizawl, the 8th Nov., 2011

Copy to:

1. Smt. Lalremsangi D/o Thangvela, Keifang, Saitual, Aizawl District through Mr. B. Lalramenga, Advocate
2. Mr. Thanzuala S/o Vana (L), Zembawk, Aizawl through Mr. B. Lalramenga, Advocate
3. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer – I, Aizawl District: Aizawl, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The Assistant Settlement Officer – II, Aizawl District: Aizawl, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. Mr. Zahlira S/o Sena, Khatla South, Aizawl
8. Mr. R. Lalhruaitluanga S/o Zahlira (L), Khatla South, Aizawl
9. P.A to Hon’ble District & Sessions Judge, Aizawl Judicial District, Aizawl
10. Case record

PESKAR