

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

## DECLARATORY SUIT NO. 08 OF 2008

Plaintiff:

Shri H. Thanzauva  
S/o Mualkira (L)  
Model Veng, Lengpui

*By Advocate's* : Mr. L.H. Lianhrima

*Versus*

Defendants:

1. The Chief Secretary to the Govt.  
of Mizoram, Aizawl.
2. Secretary to the Govt. of Mizoram,  
General Administration Department.
3. Officer on Special Duty,  
GAD (Aviation Wing)
4. Assistant Director,  
GAD (Aviation Wing).
5. Director,  
Sports & Youth Services,  
Govt. of Mizoram.

*By Advocates* : 1. Mr. R.C. Thanga, GA  
2. Mr. R. Lalremruata AGA  
3. Miss Bobita Lalhmingmawii, AGA

Proforma defendant:

The Director,  
Land Revenue & Settlement, Aizawl,  
Mizoram.

*By Advocates* : 1. Mr. R.C. Thanga, GA  
2. Mr. R. Lalremruata AGA  
3. Miss Bobita Lalhmingmawii, AGA

Date of Arguments : 25-10-2011  
Date of Judgment & Order : 31-10-2011

**BEFORE**

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

**JUDGMENT & ORDER**

## INTRODUCTORY

As directed by the Hon'ble Gauhati High Court, Aizawl Bench, Aizawl in R.F.A No. 12 of 2009 dt. 03-03-2010 by setting aside of the judgment and order dt. 18.8.2009 passed by the then trial court, the instant case is re-heard keeping in view of make up of requisite court fees and entertaining written statements of the defendants with de novo trial.

## BRIEF STORY OF THE CASE

The plaintiff has been instituted the instant suit for declaration that the Plaintiff has the title of ownership over the landed property covered by Periodic Patta No 103405/10/12 of 2004 and for a lumpsum payment of Rs 2,00,000/- for damages caused to various fruit bearing trees planted by the Plaintiff and the cost of the suit. The Plaintiff further prays for immediate acquisition of his said land as per the Land Acquisition Act, 1894 at the prevailing market rate or lumpsum payment of Rs 40 lakhs. Hence, the suit value is taken at Rs 40 lakhs. When the Plaintiff used to work as a Teacher in the Lengpui Private Middle School for almost one year sometime in the year 1970 without receiving any remuneration from the concerned authority. As a result, he was granted V.C. Pass vide Memo No LVC/LQ/LP-75 dated 17-6-1975 for an area of land for Quarry in lieu of his one year's remuneration by the Village Council Authority, Lengpui vide Memo No LVC/LQ/LP-75/ Dated 17-6-1975 which had been superseded by Periodic Patta No 103405/10/12 of 2004 vide Govt. letter No.K-53011/82/96-REV/Vol. II dated 18-6-2003. In fact, the Plaintiff has been developing and maintaining his said land by planting various crops, several fruit bearing trees etc therein and also extracting stones for sale to the contractors right from the year of allotment upto date and he has been in peaceful possession and occupation of his said land without any break till date. The following are the boundary description of his said land with location as per the said Periodic Patta No 103405/10/12 of 2004: -

Location : - B.R.T.F. Road hnuai, Lengpui Ram.

Survey No. 93

Boundary : -(a) B.R.T.F. Road  
                   (b) Kawrte  
                   (c) Tlangdung  
                   (d) Chiahpui lui leh Kham ko

According to the Sketch Map of land belonging to his said landed area duly drawn by the Revenue Authorities, the Lengpui Airport Area covered by DPL 46/98 and the land covered by Periodic Patta No 103405/10/12 of 2004 belonging to the Plaintiff is clearly demarcated by a **B.R.T.F. Road**. Hence, there is absolutely no question of encroachment or overlapping each other due to obvious reason. And that the defendant No 3 & 4 had repeatedly lodged written complaints to the Revenue Department against the Plaintiff over his said land for alleged encroachment over the landed area covered by DPL NO. 46/98. As a result, the Revenue Authorities issued Orders vide Memo No.R.11036/DPL/AF-L/99-Vol-II/2 dated 6<sup>th</sup> Sept. 1999, NO.R.11036/DPL/AF-L/99-DTE(REV)/Vol-II dated 24<sup>th</sup> Feb 2000, NO.R.13011/23/93-DC(A)/44 dated 7<sup>th</sup> March, 2000 and NO.C.13016/A-5/01-DISP/DTE(REV) dated 16<sup>th</sup> Sept. 2004 on several occasions for spot verification and a copy of which was issued to the parties concerned. While the Plaintiff had never failed to be present on the spot at

the time and place as per the said Orders, the Defendants had never turned up for the same for reason best known to them. Further, the competent authority had duly confirmed the ownership of the disputed land of the Plaintiff way back in the year 1997 vide Order Memo No.R.13011/23/92-DC(A)/38 dated 3<sup>rd</sup> November, 1997 and that too before the Defendant Government obtained their DPL 46/98. This clearly indicated that the so called complaints made by the Defendants are totally baseless, completely false, absolutely unreasonable and unsustainable in the eye of the law. Thereafter, under the instruction of the Defendant No 4, various fruit bearing trees planted by the Plaintiff within his said land covered by Periodic Patta No 103405/10/12 of 2004 had illegally been damaged by the workers and employees of the Airport Authority without his knowledge and consent. Accordingly, the Plaintiff submitted an application for compensation to the Chief Secretary of Mizoram and a copy of which was endorsed to the Defendants and the Director, LR&S Deptt and VCP, Lengpui. And that the Controller, General Administration Department (Aviation Wing), Government of Mizoram had displayed under the caption, HRIATTIRNA in the Vanglaini Daily Newspaper dated 24-11-2007 to the effect that *Lengpui Airport Area DPL 46/98 huam chhungah dan lo a Periodic Patta siam a awm a, heng Periodic Patta No 103405/10/12 of 2004 leh No 103405/10/682 of 2007 te hi lo lei lo turin mipuite ngen leh hriattir in ni*. As stated earlier, the defendants had submitted complaint against the Plaintiff for the umpteenth times to the Revenue Department by singing the same old song that the Periodic Patta No 103405/10/12 of 2004 had encroached or overlapped the land covered by DPL 46/98. However, the Revenue Authorities have actually found out that the land covered by DPL 46/98 and Periodic Patta No 103405/10/12 of 2004 belonging to the Plaintiff has clearly and unambiguously been demarcated by the **B.R.T.F. Road**. Otherwise, the Defendants could have approached the competent court for legal remedy rather than displaying the HRIATTIRNA abovementioned for nothing. Furthermore, the Plaintiff has never failed to pay revenue taxes as well as royalty to the departments concerned. That in view of the facts and circumstances of the case, the defendants do not have any reasonable ground or legal right to claim the said land covered by Periodic Patta No 103405/10/12 of 2004 belonging to the Plaintiff. The Plaintiff therefore earnestly prays the Court to grant the reliefs claimed by him in the plaint submitted to the court.

On the other hand, the defendant no. 4 has filed their written statement on 25-09-2008 through the Government Advocate and a copy of which was furnished to the Plaintiff through his counsel. It was contended that the initial land allotment to the plaintiff by the village council was without the power of the said village council. The outcome of spot verification forwarded to the OSD, GAD, Aviation Wing Dt. 7<sup>th</sup> Sept., 2000 as Annexure- B also clearly indicated that the plaintiff rather encroached the land of the answering defendant. As per the Notice passed by the then District Collector of Aizawl District dt. 17<sup>th</sup> May, 2000, the plaintiff was notified to vacate the suit land as negotiation was made for acquisition by paying compensation amounting to Rs. 10,01,594/-. The Periodic Patta of the plaintiff was lately issued in 2004 and there is no grounds to file the instant suit. They further denied that there is no fruit bearing trees or crops in the suit land cultivated by the plaintiff. The claim of the plaintiff is false and baseless and is therefore prayed to dismiss of the suit with costs.

### ISSUES

Issues were framed on 27-10-2008 and is again upheld on 13.7.2010 and was amended towards correct findings such as-

1. Whether the suit is maintainable in its present form and style.
2. Whether the suit is bad for mis-joinder/non-joinder of necessary parties.
3. Whether there is any cause of action against the defendants.
4. Whether the plaintiff has *locus standi* to file the present suit.
5. Whether the plaintiff had already received compensation amount in the process of land acquisition in the suit land or not.
6. Whether the plaintiff is entitled to the relief claimed, if so to what extent.

### **BRIEF ACCOUNT OF EVIDENCE**

The plaintiff had produced the following witnesses namely-

1. Mr. H. Thanzauva S/o Mualkira (L), Model Veng, Lengpui (Hereinafter referred to as PW-1)
2. Mr. K. Chawngdailova S/o Dengrikhuma, Vengthar, Lengpui (Hereinafter referred to as PW-2)
3. Mr. Rokamlova S/o Zahranga (L), Venglai, Lengpui (Hereinafter referred to as PW-3)
4. Mr. H. Lalremruata S/o Laldika, Venglai- Lengpui (Hereinafter referred to as PW-4)

The **PW-1** in his examination in chief reiterated the contents of the plaint being the plaintiff. He further deposed that –

*Ext. P-1 is his plaint*

*Ext. P-1 (a) and Ext. P-1 (b) are his signatures*

*Ext. P-2 is a copy of P. Patta No. 103405/10/12 of 2004*

*Ext. P-3 is a copy of Sketch map of P. Patta No. 103405/10/12 of 2004*

*Ext. P-4 is a copy of Order dt. 24<sup>th</sup> Feb., 2000*

*Ext. P-5 is a copy of Order dt. 7<sup>th</sup> March, 2000*

*Ext. P-6 is a copy of Order dt. 6<sup>th</sup> Sept., 1999*

*Ext. P-7 is a copy of Order dt. 16<sup>th</sup> Sept., 2004*

*Ext. P-8 is a copy of Order dt. 3<sup>rd</sup> Nov., 1997*

*Ext. P-9 is a copy of application dt. 12<sup>th</sup> Nov., 2007*

*Ext. P-10 is a copy of Hriatpuina Dt. 21-01-2008 issued by VCP, Lengpui*

*Ext. P-11 is a copy of Legal Notice dt. 30<sup>th</sup> Jan., 2008*

*Ext. P-12 is a copy of receipt dt. 7.9.1996 for payment of forest royalty*

*Ext. P-13 to 17 are receipts for payment of royalty to the Forest Department.*

In his cross examination, he deposed that he look after the suit land since 1970 till date. His plot of land was issued as Village Council pass and later converted into Periodic Patta in 2004.

The **PW-2** in his examination in chief deposed that while the plaintiff was employed as Hindi Teacher in Private Middle School, Lengpui since 16<sup>th</sup> Jan., 1970 and unable to pay his salary, he was allotted a land at Chiahpui area by the Village Council, Lengpui on 17.6.1975 and forthwith started development of the said land by the plaintiff. Mr. Rualthankhuma, the then VCP of Lengpui allotted the said land to Lengpui Games and Sports Association on 3/8/1982. As preferred complaint by the plaintiff, it was

restored on 6.1.1984 by the said VCP with official seal. He witnessed that the crops and fruits of the plaintiff was damaged by the Airport Authority without the consent of the plaintiff. So far as his knowledge concerned the damaged crops are – Jack fruit- 43, Zawngtah- 30, Mango tree- 12, Guava tree- 2, Banana- 28 and other trees- 16. The plaintiff thereby submitted application for compensation to the Chief Secretary to the Govt. of Mizoram. The Order of the ASO-1, Aizawl District dt. 3<sup>rd</sup> Nov., 1997 also upheld the validity of Periodic Patta No. 193405/10/12 of 2004 belonging to the plaintiff.

In his cross examination, he deposed that he was the sitting VCP of Lengpui. He denied that the suit land is not located adjacent to the main road.

The **PW-3** in his examination in chief deposed that during his tenure of Secretary of Village Council, Lengpui, as they could not pay the salary of the plaintiff as employed Hindi Teacher in Lengpui Private Middle School, they allotted the suit land to the plaintiff. while the plaintiff was employed as Hindi Teacher in Private Middle School, Lengpui since 16<sup>th</sup> Jan., 1970 and unable to pay his salary, he was allotted a land at Chiahpui area by the Village Council, Lengpui on 17.6.1975 and forthwith started development of the said land by the plaintiff. Mr. Rualthankhuma, the then VCP of Lengpui allotted the said land to Lengpui Games and Sports Association on 3/8/1982. As preferred complaint by the plaintiff, it was restored on 6.1.1984 by the said VCP with official seal. He witnessed that the crops and fruits of the plaintiff was damaged by the Airport Authority without the consent of the plaintiff. So far as his knowledge concerned the damaged crops are – Jack fruit- 43, Zawngtah- 30, Mango tree- 12, Guava tree- 2, Banana- 28 and other trees- 16. The plaintiff thereby submitted application for compensation to the Chief Secretary to the Govt. of Mizoram. The Order of the ASO-1, Aizawl District dt. 3<sup>rd</sup> Nov., 1997 also upheld the validity of Periodic Patta No. 193405/10/12 of 2004 belonging to the plaintiff.

In his cross examination, he deposed that he was the President of Village Council in 1975. He denied any leading questions suggesting to contradict his statements in examination in chief.

The **PW-4** in his examination in chief deposed that he is presently the Member of Village Council, Lengpui. While the plaintiff was employed as Hindi Teacher in Private Middle School, Lengpui since 16<sup>th</sup> Jan., 1970 and unable to pay his salary, he was allotted a land at Chiahpui area by the Village Council, Lengpui on 17.6.1975 and forthwith started development of the said land by the plaintiff. Mr. Rualthankhuma, the then VCP of Lengpui allotted the said land to Lengpui Games and Sports Association on 3/8/1982. As preferred complaint by the plaintiff, it was restored on 6.1.1984 by the said VCP with official seal. He witnessed that the crops and fruits of the plaintiff was damaged by the Airport Authority without the consent of the plaintiff. So far as his knowledge concerned the damaged crops are – Jack fruit- 43, Zawngtah- 30, Mango tree- 12, Guava tree- 2, Banana- 28 and other trees- 16. The plaintiff thereby submitted application for compensation to the Chief Secretary to the Govt. of Mizoram. The Order

of the ASO-1, Aizawl District dt. 3<sup>rd</sup> Nov., 1997 also upheld the validity of Periodic Patta No. 193405/10/12 of 2004 belonging to the plaintiff. Ext. P-10 is acknowledgement on the basis of spot verification and Ext. P-10 (a) is his signature.

In his cross examination, he denied that he did not have any knowledge on the suit land. In short, he denied any leading questions suggesting to contradict his statements in examination in chief.

For the defendant No. 4:

The defendant no. 4 had produced the following witnesses namely-

1. Mr. Saidenga, Assistant Director, GAD (Aviation Wing) Govt. of Mizoram (Hereinafter referred to as DW-1)
2. Mr. Zohmangaiha, President, Lengpui Games and Sports Association (Hereinafter referred to as DW-2)
3. Mr. Lalbiaknia, Assistant Secretary, Lengpui Games and Sports Association (Hereinafter referred to as DW-3)

The **DW-1** in his examination in chief deposed that the Government of Mizoram allotted Land Lease No. 46 of 1998 to the GAD, Govt. of Mizoram for the construction of Lengpui Airport and the covered area by the said lease is 2345.50 bighas. The Pass is divided into two- Block-I which is the northern Block and Block-II which is the southern block. The said two blocks are separated by BRTF road from Lengpui to Rawpuichhip. Taxes were also paid up to date to the Revenue Department. The plaintiff had claimed some portion of Block-II of the lease by virtue of his illegal Periodic Patta No. 103405/10/12 of 2004 which is issued within the landed area covered by the said Block- II. This periodic patta is alleged by the plaintiff to have been issued in lieu of stone quarry as pass issued by the Village Council of Lengpui. Without replying show cause notice issued by the Revenue Authority to the plaintiff, the plaintiff had filed the instant suit. In the year of 2000, spot verification of concerned official team was conducted and found in the negative sense of the plaintiff. Negotiated settlement was made with the plaintiff and given compensation amounting to Rs. 10,01,594.00 for his two Village Council Passes viz. Pass No. 11 of 1974 and No. 58/91 of 1974. After that he obtained Periodic Patta for the same land in the year of 2004 and therefore made the instant claim. He further deposed that-

*Ext. D-1 is written statement*

*Ext. D-1 (a) and (b) are his signatures*

*Ext. D-2 is a copy of Quarry pass of the plaintiff*

*Ext. D-3 is spot verification report*

*Ext. D-4 is show cause for eviction of the plaintiff*

*Ext. D-5 is DLP No. 46 of 1998*

*Ext. D-5 (i) to (v) are the boundary descriptions and particulars of the said Land Lease*

*Ext. D-6 is sketch map of DLP No. 46 of 1998*

*Ext. D-7 is receipt for payments of taxes.*

*Ext. D- 7 (i) is detail assessment of DLP No. 46 of 1998*

*Ext. D-8 is show cause notice issued to the plaintiff for cancellation of the instant P. Patta*

*Ext. D-9 is declaration made by the plaintiff before issuance of his P. Patta*

Ext. D-10 is No. Objection Certificate signed by the VCP, Lengpui (All documents are objected by learned counsel for the plaintiff)

In his cross examination, he deposed that he did not know the process for issuance of the P. Patta of the plaintiff. So far as his knowledge concerned the said P. Patta is conversion of the previous Village Council. He admitted that the plaintiff had constructed a jhum hut in the suit land. The Games and Sports Association of Lengpui also have had a land adjacent to the suit land and later allotted alternative site for them. He denied that DLP No. 46 of 1998 and the area covered by the P. Patta of the plaintiff did not overlap.

The **DW-2** in his examination in chief deposed that he is the President of Games and Sports Association of Lengpui. On 3.8.1982, land was allotted to them as Games and Sports Association of Lengpui under VC. Pass No. 3. The State Sport Council was allowed to construct Sport complex in the said land but without given legal ownership. As it was required for Airport, the Government of Mizoram issued DLP No. 46 of 1998 in the name of Secretary to the Govt. of Mizoram, GAD. As it was acquired by the government, the government had purchased a land from Mr. Thanhnuna under VC Pass No. L. 226/97 and V/C L. 230/1997 and given as alternative site to the said Games and Sports Association of Lengpui. Before allotment of the suit land to the Games and Sports Association of Lengpui in 1982, none aware of other owners as did not develop and small area. As the land of the plaintiff was allotted for quarry and the Village Council is not competent to issue the said pass, it was later cancelled.

In his cross examination, he admitted that the plaintiff have a small plot of land near the land of the Games and Sports Association of Lengpui. He rather constructed a jhum hut in the suit land. No compensation money was received by the Games and Sports Association of Lengpui from Mr. Saidenga.

The **DW-3** in his examination in chief deposed that he is the Assistant Secretary of Games and Sports Association of Lengpui. On 3.8.1982, land was allotted to them as Games and Sports Association of Lengpui under VC. Pass No. 3. The State Sport Council was allowed to construct Sport complex in the said land but without given legal ownership. As it was required for Airport, the Government of Mizoram issued DLP No. 46 of 1998 in the name of Secretary to the Govt. of Mizoram, GAD. As it was acquired by the government, the government had purchased a land from Mr. Thanhnuna under VC Pass No. L. 226/97 and V/C L. 230/1997 and given as alternative site to the said Games and Sports Association of Lengpui. Before allotment of the suit land to the Games and Sports Association of Lengpui in 1982, none aware of other owners as did not develop and small area. As the land of the plaintiff was allotted for quarry and the Village Council is not competent to issue the said pass, it was later cancelled.

In his cross examination, he admitted that he did not know whether the plaintiff has Periodic Patta in the suit land or not.

The other defendants did not contest in the instant proceedings till arguments. No compensation money was received by the Games and Sports Association of Lengpui from Mr. Saidenga. He further denied that the plaintiff had developed the suit land by cultivating crops.

### **ARGUMENTS**

Mr. L.H. Lianhrima learned counsel for the plaintiff stated that with regards to maintainability of the suit, as per direction of the Hon'ble Gauhati High Court in RFA No 12 of 2009, the Plaintiff has made payment of Rs 5,000/- as court fee for consequential relief claimed by him. Besides this, the Plaintiff has held Periodic Patta No 103405/10/12 of 2004 in super-session of his V.C.Pass in respect of the suit land. Moreover, the Assistant Settlement Officer, Land Revenue and Settlement Officer-I, Aizawl District has upheld the V.C.Pass granted by the V.C.Lengpui for Quarry and duly confirmed the ownership of the Plaintiff in respect of the suit land vide his Order dated 3<sup>rd</sup> November, 1997 (Ext P-8). Hence, the Issue No 1 is to be decided in favour of the Plaintiff. He took reliance in the decision of Apex Court in the case of **The Special Land Acquisition and Rehabilitation Officer, Sagar –Vrs- M.S. Seshagiri Rao and another which was reported in AIR 1968 SC 1045** held that *“Where certain lands are granted by the Government with a condition that in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation but the Government without exercising the power reserved by the terms of the grant adopts the procedure prescribed by the Land Acquisition Act, the Government has to pay compensation for acquisition of the land under the provisions of the Act”*. Similarly, in the instant case, the Revenue Authorities granted Periodic Patta No 103405/10/12 of 2004 to the Plaintiff in supersession of his V.C. Pass and if the Government requires the suit land covered by the said Periodic Patta, the same shall be acquired by the government as per provision. Mr. L.H. Lianhrima further delving that It is voluminously clear from the deposition of the Defendant Witnesses that the Plaintiff has been granted landed property by the Village Council Authorities which has been superseded by Periodic Patta No. 103405/10/12 of 2004 and the area of land is also exactly similar to the landed area granted by the Village Council Authorities, Lengpui as can be seen from the Ext P-2 (Periodic Patta No 103405/10/12 of 2004) and the boundary description given by the Plaintiff Witness, Shri Rokamlova Ex VCP in his examination in chief. The PW, Shri Rokamlova was the Village Council President, Lengpui in the year, 1975 when the V.C.Pass in respect of the suit land was duly granted to the Plaintiff. The Defendant No 4 has also clearly stated in his cross examination that no compensation has been made to the Plaintiff in respect of the suit land. Learned Counself further submitted that all the Plaintiff Witnesses have deposed before the court that the Plaintiff has been maintaining his said land by planting various crops and fruit bearing trees thereon since the year of allotment i.e. 1975 by spending huge amount of money. The Plaintiff Witnesses also stated on oath that under the instruction of the Defendant No 4 various fruit bearing trees planted by the Plaintiff within his said land covered by Periodic Patta No 103405/10/12 of 2004 had illegally been damaged by the workers and employees of the Airport Authority without the knowledge and consent of the Plaintiff. He therefore concluded that on the application of the Plaintiff,



members of the Village Council Authorities conducted spot verification to ascertain the number of fruit bearing trees damaged by the defendant no 4 and the verification report was Ext P-10 and the Plaintiff is entitled to the relief claimed by him in the plaint.

Mr. R.C. Thanga, learned Government Advocate vehemently and accurately argued by dividing into tenth points, in his **first** point: The suit is not maintainable for non-joinder of the State of Mizoram as a party. This non-joinder of the State of Mizoram has violated the provisions contained in section 79(b), Order 27, Rule 3 & 5A of C.P.C. 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 reproduced (relevant lines) as follows: "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. Even on this lone ground, the suit is not maintainable and is liable to be dismissed.

In the **second** point: The suit is not maintainable for non-joinder of necessary party i.e. Secretary to the Govt. of Mizoram, Revenue Department. He elaborated that in the plaint, Director of Land Revenue & Settlement is added as a pro forma defendant. To add Director of Land Revenue & Settlement as a pro forma defendant means that Revenue Department of Govt. of Mizoram is not joined as a party for he cannot represent Revenue Department of Govt. of Mizoram. Revenue Department i.e. Secretary of that Department is undoubtedly a necessary party. The Supreme Court has laid down that 'a necessary party is one without whom no order can be made effective.' Gyan Devi's case reported in (1995)2SCC 326, (1998)5SCC (Jour) 21. Udit Narain Malpaharia v. Addl.Member, Board of Revenue reported in 1963 Suppl(1)SCR 676. In this particular case, no effective order can be passed against the Revenue Department if in case the plaintiff succeeds. Non-joinder of a necessary party defeats a suit as provided in Order 1, Rule 9 CPC. On this ground also, the suit is liable to be dismissed. It appears that the plaintiff has deliberately omitted to join the Revenue Department as a party knowingly that it is a necessary party so that the mistake committed by it in issuing a Periodic Patta in favour of the plaintiff may not be revealed or brought to light. This shows that the plaintiff has not come to the court with clean hands.

Mr. R.C. Thanga travelled in his **third** point that the pass of the plaintiff on the basis of which the plaintiff has instituted this suit is Periodic Patta No. 103405/10/12 of 2004 issued on 27.2.2004 expired on 27.2.2008

2008 as the validity period extended upto 27.2.2008. Since the pass holder had not obtained extension of the validity period, the said Pass expired on 27.2.2008 by efflux of time: cancellation by the revenue authority is not necessitate, it is prescribed in the pass itself as clearly seen at serial No. 10 of the terms and conditions of the Periodic Patta itself where it is written - *“10. The Periodic Patta shall be treated as cancelled automatically if it is not renewed on application within 6(six) months from the date of its expiry.”* There is no record to show that the plaintiff has obtained renewal of his P.Patta in term of this legal requirement. From the record it is seen that this suit was filed on 22.4.2008 after the pass had expired. After the validity period had expired by the efflux of time, the plaintiff's right to sue also had expired. That means the plaintiff had no cause of action for the suit on 22.4.2008 when this suit was filed. The plaint ought to have been rejected but the court had not done so: hence, it is liable to be dismissed on this ground also.

In the **fourth** point: The core issue for determination is as to which pass is to prevail over the other - the pass of the plaintiff or that of the defendant Government. The pass of the plaintiff was issued on 27.2.2004. The pass of the defendant Govt. is a land lease No. DLP 46 of 1998 issued on 17.9.1998. The pass DLP 46 of 1998 that was issued **earlier in point of time** is to prevail over the PP that expired on 27.2.2004. The said PP was issued to have validity from 2004-2008 and its validity has not since been extended till date while the said DLP is to expire on 31.8.2023. Undoubtedly the DLP is to prevail over the said PP. During the life time of the DLP, the said PP was issued: it is void ab initio. This is a clear mistake of fact on the part of the revenue authority for the PP could not have been issued for the same land covered by the DLP. Even if the PP were issued knowingly that it falls within the DLP, the PP is void ab initio for under the underlying principle of the revenue law in force, two persons cannot have separate passes for the same land all at the same time. In other words, there cannot be two passes for the same land all at the same time: one of the two must prevail over the other. In this particular case, DLP which is issued earlier in point of time is undoubtedly to prevail. Since this is crystal clear, I feel it is not necessary to give citations in support even though there are rulings.

In the **fifth** point he added that no objection was obtained by the plaintiff from the neighbouring land owners as clearly seen in Exhibit M-10 (Annexure -J of the w/s). The issuance of the PP itself is illegal and the PP is therefore invalid.

In the **sixth** point. The plaintiff has claimed that his land has not encroached on the land of the defendant Govt. i.e. DLP 46/98. This DLP is divided into two Blocks, Block I & Block II because the airport land is cut through by BRTF (Aizawl to Marpara) road as seen in the sketch map (Annexure F of the w/s and Exhibit M-6). The southern portion lying to the south of BRTF road is Block II. Boundary Pillars 14 to 1 on the northern side goes along the BRTF road. It is also seen in the boundary descriptions at Exhibits M-5(1) to M-5(5) corresponding to Annexures E1 to E4 of the w/s. The Periodic Patta at Annexure 1 of the plaint (Exhibit P-2) is bounded on the north by BRTF road and on the west by Khamko. The said DLP and PP have common boundary on the north and west. This fact undeniably reveals that the PP overlaps the DLP. It overlaps the western portion of the DLP as indicated in Exhibit M-6. This is in tune with Exhibit P-3 which is a rough sketch map of the PP though drawn not to scale. Furthermore, Annexure H of the w/s (Exhibit M-8) reveals that the PP encroaches the said DLP.

In the **seventh** point. The plaintiff has claimed that his V/C Pass No. LVC/LQ/LP-75 of 17.6.1975 is superceded by his P.Patta. This does not stand the test of facts. This V/C pass at Exhibit M-2 (Annexure A of the w/s) is a stone quarry. Its boundary on the western side where Chiahpui lui runs is described as follows: '*Chiahpui lui in lam pang khamko zelah*' (from Chiahpui lui to khamko on the village side). It is clear the land lies in between Chiahpui lui and khamko. This is clearly seen in the sketch map at Exhibit M-6 exhibited by the defendant No. 4 and Exhibit P-3 exhibited by the plaintiff. The western side boundary of the P. Patta is 'khamko'. This V/C Pass land lies to the west of the P. Patta. The boundary descriptions of the two passes are not the same. At the same time, the V/C Pass for stone quarry cannot be converted into or superseded by a P. Patta and the area of the P. Patta covers a large area of land not fit for stone quarry and there is no record to show that it is in supercession of the V/C pass. This P. Patta was issued separately. Still furthermore, the said V/C pass is illegal for V/C is not competent authority to issue stone quarry.

In the **eight** point. The plaintiff takes his stand at Annexure VII of the plaint (Exhibit P-8). This order issued by ASO-I relates to the said stone quarry. Upon close reading of the said order, it is seen this order does not concern the P.Patta, nor this order gives ownership of the stone quarry to the plaintiff. This fact is affirmed by the fact that this was issued on 3.11.1997 before issuance of the P.Patta. This point does not hold any water.

In the **ninth** point relates to the claim of two lakhs rupees for the fruit bearing trees alleged to have been damaged by the defendant No. 4 on 8 November, 2007. The plaintiff obtained P.Patta in the year 2004. The fruit trees mentioned in the plaint cannot be fruit bearing in the year 2007 except kawltnei and banana. The plaintiff has not proved in evidence the number of fruit trees in his PP land at Exhibit P-9 & 10 alleged to have been damaged. The plaintiff's witness H. Lalremruata deposed in paragraph 2 that the plaintiff planted fruit trees in his quarry land. The plaintiff has stated the fruit trees to have been planted in his PP land. In Exhibit 10, this witness also has stated that the fruit trees were in the PP land. Pu Lalkhuma Varte, VCP is not examined. The fruit trees alleged to have been damaged were not verified in presence of the defendants and other competent revenue authorities and the alleged verification was done behind the back of the defendants. These contradictory statements cannot be accepted and relied on. As per the joint verification report of the Addl. Deputy Commissioner, Aizawl, at Anneure-B of the of the w/s (Exhibit M-3 exhibited by the defendant No. 4) which is an authentic document, at first para of page 2 of the report it is clearly seen that the plaintiff had not developed his claimed land. The portion of land claimed by the plaintiff also does not tally with the boundary descriptions. From this, it can be seen the plaintiff had claimed the suit land even before he obtained P.Patta. As seen in this report the plaintiff has made a claim on the basis of his V/C pass but the boundary descriptions cannot cover the portion he has claimed. In the fourth para of page 2 of the said report, it is confirmed that the land claimed by the plaintiff not covered by his V/C pass has encroached on the airport land. For this portion claimed by him but does not covered by his V/C pass, he obtained the said P.Patta in the year 2004 by hook or by crook. From these facts, the plaintiff's claims to have planted the said fruit trees and the damage alleged to have been done cannot be sustained in law for want of sufficient and reliable documents and oral evidence in support. His claim for two lakh rupees cannot be sustained even in wild dream.

In the **tenth** point. From the joint verification reports at Exhibit M-3 and the evidence adduced by the two witnesses namely Lalbiaknia and Zohmangaiha, it is clear that the suit land was owned in succession by Lengpui Games & Sports Association, thereafter by State Sports Council till it was donated for airport land. After the DLP 46/98 was duly issued by competent authority, the plaintiff, by surreptitious means and for ulterior motive obtained his PP in the year 2004 in collusion with the surveyor.

Mr. R.C. Thanga concluded his arguments that it may be mentioned that even though the V/C pass for stone quarry given to the plaintiff, being given by incompetent authority, is invalid, it is respected and was intentionally excluded and put outside the airport area while demarcation of the airport area was undertaken. He therefore prayed to dismiss this suit with cost for alleged vexatious claims.

## **FINDINGS**

### **Issue No. 1**

#### **Whether the suit is maintainable or not**

A requisite court fees is paid by the plaintiff. No laches and irregularities had been alleged and challenged in the proceedings which can vitiate the proceedings except non-joinder of necessary parties. Inevitably, this issue alone is therefore decided in favour of the plaintiff.

### **Issue No. 2**

#### **Whether the suit is bad for mis-joinder/non-joinder of necessary parties.**

The law is very clear that necessary party in the suit is simply one without who no effective order can be made as held 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, it was noted 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.”

In this view of angle, the arguments advanced by Mr. R. C. Thanga is correct and true as held in **Commissioner -cum-Secretary & Ors vs.T.C. Syndicate & Ors. (Supra.)** like exclusion of the State of Mizoram as defendant. Moreover, as embodied u/s 80 of the CPC, the Collector of the District is paramount. In the instant case, Ext. D-4 is notice to the plaintiff to vacate the suit land issued by the District Collector of Aizawl District due to already make payment of compensation amount to the plaintiff as negotiated. Meanwhile, he is not impleaded as defendant will cause irregularities which vitiate the proceedings. More so, cogently, in each and every land acquisition process, the District Collector is vitally important to play pivotal role as per the Land Acquisition Act, 1894 whilst the prayer no. (c) is for acquisition of the suit land under Periodic Patta No. 103405/10/12 of 2004. Ext. D-3 is also a report of spot verification issued

by the Additional Deputy Commissioner, Aizawl. In short, exclusion of District Collector, Aizawl in the instant case will defeat justice.

The other avenue like appended the Director, Land Revenue and Settlement Department, Govt. of Mizoram as merely as proforma defendant as raised by Mr. R.C. Thanga is also genuine although a belated stage, I find that this crux is beyond the rigour of O. I R. 13 of the CPC. The plaintiff prayed to declare him as the true and legal owner of the land covered by Periodic Patta No. 103405/10/12 of 2004. Without impleadment of the Secretary to the Govt. of Mizoram, Revenue Department and Director of Land Revenue and Settlement Department. No efficacious and tuneful adjudication can be held. On this ground alone also, the suit is liable to dismiss.

### **Issue No. 3**

#### **Whether the plaintiff has cause of action against the defendants or not**

The terminology of cause of action is already settled 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.”

As per Ext. P-2, the disputed Periodic Patta No. 103405/10/12 of 2004 is valid upto 2008 from 2004. Mr. R.C. Thanga embarked that this Periodic Patta is expired on 27.2.2008 and the plaintiff has not obtained extension of the validity period. In this task, the terms and conditions in the back side of the documents under para 10 reads thus-

“10. The Periodic Patta shall be treated as cancelled automatically if it is not renewed on application within 6(six) months from the date of its expiry.”

Pertinently, I must further look into the entity of Periodic Patta, the Periodic Patta is issued to the plaintiff under section 4 (3) of the Mizo District (Agricultural Land) Act, 1963 which is temporary in nature as the name itself indicates as put under Terms and Conditions no. 9 in the back side of the disputed Periodic Patta. Paragraph No. 9 of the conditions of issuance speaks that-

“9. This Periodic Patta may be cancelled without compensation at any time even before the expiry of period of allotment, if the same is required for the public purposes but sufficient time shall be given to the holder for collection of the agriculture products in it”

Section 4 (3) of the said Mizo District (Agricultural Land) Act, 1963 also reads thus-

“4. (3) The Administrator of Mizoram may, by rules, impose such conditions as it may deem reasonable on all allotments of lands made under sub-section (1) of this section in the interest to general public or of Scheduled Tribe.”

It indicates that solely for the purpose of public purposes, Periodic Patta can be cancelled without compensation during its lifetime which is a law enacted and imposed within the ambit of the State Government.

Mr. L.H. Lianhrima further argued by relying in the case of **The Special Land Acquisition and Rehabilitation Officer, Sagar –Vrs- M.S. Seshagiri Rao and another which was reported in AIR 1968 SC 1045**, it was held that

“Where certain lands are granted by the Government with a condition that in the event of the Government requiring the land for any reason whatsoever, the grantee shall surrender the land to the Government without claiming any compensation but the Government without exercising the power reserved by the terms of the grant adopts the procedure prescribed by the Land Acquisition Act, the Government has to pay compensation for acquisition of the land under the provisions of the Act”.

Howsoever, the instant Periodic Patta No. 103405/10/12 of 2004 is issued on 27.2.2004 and will valid upto 2008 from 2004. Mr. R.C. Thanga embarked that this Periodic Patta is expired on 27.2.2008 which is undisputed. Meanwhile, the instant suit is filed on 24.4.2008 after expired of the disputed Periodic Patta No. 103405/10/12 of 2004. As discussed above, the instant Periodic Patta No. 103405/10/12 of 2004 is governed by the provisions of the Mizo District (Agricultural Land) Act, 1963, cogently, the plaintiff without right to sue (Cause of action) and without victims in the act of the defendants filed the instant suit as there is not arbitrary and illegal act on the part of the defendants. This issue is therefore decided in the affirmative sense of the defendants. Furthermore, the ratio laid down in **The Special Land Acquisition and Rehabilitation Officer, Sagar –Vrs- M.S. Seshagiri Rao and another (Supra)** which deals ‘Mysore Land Revenue Rule’ have no effect as filing of the suit without cause of action in the instant case.

#### **Issue No. 4**

#### **Whether the plaintiff has *locus standi* to file the present suit.**

The concept and nature of *locus standi* is also well germinated 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." This 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."

Without cause of action in favour of the plaintiff, no *locus standi* will be available to the plaintiff. It is needless to elaborate more.

### **Issue No. 5**

#### **Whether the plaintiff had already received compensation amount in the process of land acquisition in the suit land or not.**

Ext. D- 4 is corroborated by deposition of DW-1 saying that the plaintiff had received Rs. 10,01,594.00 as negotiated settlement compensation for his two Village Council Pass Nos. 11 of 1974 and No. 58/91 of 1974. After that he obtained the instant Periodic Patta No.

103405/10/12 of 2004. In the Ext. D-4, the then District Magistrate of Aizawl noticed the plaintiff to vacate the suit land within fifteen days from the date of issuance of order as the suit land under Village Council Pass Nos. 11 of 1974 and No. 58/91 of 1974 was acquired by the Government through negotiation on payment of Rs. 10,01,594.00 to the plaintiff. It was issued on 17<sup>th</sup> May, 2000. This itself speaks that after receiving compensation under Village Council Pass, the plaintiff had obtained a fresh Periodic Patta from the Revenue Authority. I find no justification like moral, law/legal and ethical on the side of the act of the plaintiff except it reminds us the obiter dicta of Hon'ble Supreme Court in **Ramjas Foundation & Ors. vs Union Of India & Ors.** decided on 9 November, 2010 in connection with Civil Appeal No.6662 of 2004, the Supreme Court has held that-

“14. The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every Court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

#### **Issue No. 6**

#### **Whether the plaintiff is entitled to the relief claimed or not, if so to what extent.**

As lengthy discussions on the above, I find that the plaintiff will have no entitle any relief which he sought in the plaint. If found entitlement, what of mode and how accurate calculation for lumpsum payment will be made is also beyond pleadings. 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 31<sup>st</sup> October, 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. DS/8/2008, Sr. CJ (A)/

Dated Aizawl, the 31<sup>st</sup> Oct., 2011

Copy to:

1. Shri H. Thanzauva S/o Mualkira (L), Model Veng, Lengpui through Mr. L.H. Lianhrima, Adv.
2. The Chief Secretary to the Govt. of Mizoram, Aizawl through Mr. R. C. Thanga, GA
3. Secretary to the Govt. of Mizoram, General Administration Department through Mr. R. C. Thanga, GA
4. Officer on Special Duty, GAD (Aviation Wing) through Mr. R. C. Thanga, GA
5. Assistant Director, GAD (Aviation Wing) through Mr. R. C. Thanga, GA
6. Director, Sports & Youth Services, Govt. of Mizoram through Mr. R. C. Thanga, GA
7. The Director, Directorate of Land Revenue & Settlement, Aizawl, Mizoram through Mr. R. C. Thanga, GA
8. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
9. Case Record.

PESKAR