

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

DECLARATORY SUIT NO. 07 OF 2005

Plaintiff:

Mr. Lalchungliana
S/o Rilmansiaka
Dawrpui Vengthar- Aizawl

By Advocate's : Miss N. Lalzawmliani, Adv.

Versus

Defendant:

Mr. C. Zakhuma
S/o Challiana (L)
Diakkawn, Kolasib

By Advocates : 1. Mr. M. Zothankhuma, Sr. Adv.
2. Mr. R. Laltanpuia, Adv.

Proforma defendants:

1. The State of Mizoram
Represented by the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue & Settlement Department
Govt. of Mizoram
4. The Assistant Settlement Officer-II
Mamit District: Mamit
Land Revenue & Settlement Department
Govt. of Mizoram

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

BEFORE

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

Date of Arguments : 08-09-2011
Date of Judgment & Order : 12-09-2011

JUDGMENT & ORDER

BRIEF FACTS

The plaintiff is the holder of Special Power of Attorney executed by Mr. Rilmansiaka, Lushaicherra, Mamit District. The plaintiff had obtained

Permit No. 270 of 1991 Dt. 8/11/1991 issued by the Village Council/Court, Lushaicherra for the purpose of Wet Rice Cultivation located at near CSF with an area of 15 bighas. Meanwhile, the defendant no. 1 had obtained Periodic Patta No. 2 of 1997 and subsequently converted into LSC No. 400103/09/27 of 2004 allegedly in the suit land. The Government of Mizoram, Revenue Department after conducting spot verification issued a letter under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004 titled "WRC disputes between Pu C. Zakhuma and Pu Rilmansiaka at Lushaicherra village" concluded that the disputed site is within the area of P. Patta No. 2/97 belonging to Pu C. Zakhuma, as such directed to retain the whole area by the said Mr. C. Zakhuma. The plaintiff therefore prayed (i) to declare the title of the said land in favour of the plaintiff (ii) the operation of the said impugned order under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004 be stayed and (iii) any other relief to which the plaintiff is entitled.

The defendant no. 1 filed written statements saying that the plaintiff has not challenged the issuance of Periodic Patta No. 2 of 1997 and the subsequent LSC No. 400103/09/27 of 2004. Thus, barred the suit by law of limitation. The said Village Council Pass No. 27/91 is issued without competent authority and does not have any legal entity. It is rather fabricated document in as much as the plaintiff himself has stated that some part of his alleged land had been occupied by the Central State Farm and had been released by the said CSF in 1994. With regards to WRC Pass No. 12 of 1960, it was already cancelled by the competent authority and have no value in respect of encroachment of the location. Thus, prayed to dismiss of the suit as being devoid of any merit with costs.

ISSUES

The following issues are therefore framed on 23-10-2006 and was amended towards right decisions, the amended form thereof are as-

- (1) Whether the suit is maintainable or not
- (2) Whether the plaintiff has cause of action/*locus standi* to file the suit against the defendants
- (3) Whether the plaintiff is entitled the suit land to be declared title in his favour or not.

BRIEF ACCOUNT OF EVIDENCE

The plaintiff had produced the following witnesses

1. Mr. H. Hrangthanga S/o Lalrawna (L), Lushaicherra, Mamit District (Hereinafter referred to as PW-1)
2. Mr. Thangliana S/o Rothianga (L), Lushaicherra, Mamit District (Hereinafter referred to as PW-2)
3. Mr. Lalliana S/o R.Z. Liana, Lushaicherra, Mamit District (Hereinafter referred to as PW-3)
4. Mr. J. Lalropuia S/o Vanngura (L), Lushaicherra, Mamit District (Hereinafter referred to as PW-4)
5. Mr. Lalchungliana S/o Rilmansiaka, Lushaicherra, Mamit District (Hereinafter referred to as PW-5)

The **PW- 1** in his examination in chief deposed that the plaintiff had occupied the suit land since 1960 continuously but almost half of the land was occupied by Central State Farm during 1970 to 1994 and later released to the plaintiff. He did not know the reasons why the defendant no. 1 had

occupied the suit land. Ext. P- 3 is explanation of sale deed and Ext. P- 3 (a) is his true signature.

In his cross examination, he deposed that as he was born in 1964, he did not have any personal knowledge before 1964. He lately saw the Village Council Pass in 2002. He was not also aware of the Periodic Patta and LSC obtained by the defendant no. 1.

The **PW- 2** in his examination in chief deposed that the plaintiff had occupied the suit land since 1960 continuously but almost half of the land was occupied by Central State Farm during 1970 to 1994 and later released to the plaintiff. He did not know the reasons why the defendant no. 1 had occupied the suit land. Ext. P- 7 is acknowledgement letter and Ext. P- 7 (a) is his true signature.

In his cross examination, he deposed that as the previous Village Council pass in 1960 was cancelled on 18.3.1976 (Ext. P-2). Being the then President of concerned Village Council, he issued Village Council Pass No. 270/1991 to the plaintiff for agricultural purpose with an area of 15 bighas.

The **PW- 3** in his examination in chief deposed that the plaintiff had occupied the suit land since 1960 continuously but almost half of the land was occupied by Central State Farm during 1970 to 1994 and later released to the plaintiff. He did not know the reasons why the defendant no. 1 had occupied the suit land. Ext. P- 7 is acknowledgement letter and Ext. P- 7 (b) is his true signature.

In his cross examination, he admitted that he was not aware of the Periodic Patta and LSC obtained by the defendant no. 1.

The **PW- 4** in his examination in chief deposed that the plaintiff had occupied the suit land since 1960 continuously but almost half of the land was occupied by Central State Farm during 1970 to 1994 and later released to the plaintiff. He did not know the reasons why the defendant no. 1 had occupied the suit land.

In his cross examination, he deposed that the plaintiff's pass issued in 1990 was made when he was the Secretary in the concerned Village Council. But he did not ascertained that whether the same was put in the proper record of the said Village Council or not.

The **PW- 5** in his examination in chief merely reiterated the contents of the plaint being the plaintiff. He further deposed that-

Ext. P- 1 is Land holding record issued by the VCP, Lushaicherra
Ext. P- 2 is order of Governor Dt. 18.3.1976
Ext. P- 3 is Letter issued by the VCP dt. 5.9.2002, Lushaicherra
Ext. P-4 is P. Patta No. 2 of 1997 extended till 2002
Ext. P-5 is a copy of Order issued by Dy. Director, LR&S Department dt. 3.10.2002
Ext. P-6 is letter issued by the VCP dt. 4.8.2003, Lushaicherra
Ext. P-7 is a letter of Acknowledgement Dt. 17.7.2008 issued by the VCP
Ext. P- 8 is letter issued by the VCP dt. 17.9.2004, Lushaicherra
Ext. P-9 is Legal Notice dt. 4.5.2005
Ext. P- 10 is Power of Attorney dt. 6.6.2005

In his cross examination, he admitted that no Revenue pass or permit had issued in favour of the plaintiff in respect of the suit land.

The defendant had produced only one witness namely- Mr. C. Zakhuma S/o Challiana, Diakkawn, Kolasib (Hereinafter referred to as **DW**), being the defendant, he merely reiterated his contents of written statements in his examination in chief. He further deposed that-

Ext. D-1 is a copy of Notification dt. 1.6.2004 issued by the GOM

Ext. D-2 is a copy of P. Patta No. 2/1997

Ext. D-3 is a copy of Letter dt. 16.3.2004 issued by the GOM

Ext. D-4 is a copy of Order dt. 29.3.2004 issued by the Asst. Director, LR&S Deptt.

Ext. D-5 is a copy of letter dt. 3.5.99 issued by the VCP, Lushaicherra.

Ext. D-6 is a copy of LSC No. 400103/09/27 of 2004.

In his cross examination, he deposed that the plaintiff's father Mr. Rilmansiaka was engaged by him as a labour in his farm. After released the suit land by the CSF, he admitted that the plaintiff's father had developed the land but he never preferred any objections.

POINTS OF RIVALRY

Miss N. Lalzawmliani learned counsel for the plaintiff after delving into evidences adduced in the proceedings submitted that the Periodic Patta No. 2/97 of the defendant is strongly challenged as well as the LSC as the defendant had obtained the said Periodic Patta & LSC by fraud, without following the formality and proper procedure. That the concerned VCP has to issue no objection and proof of vacant land while processing for Periodic Patta. But in the instant case, the defendant No. 1 by violating all those procedure fraudulently obtained Periodic Patta from the office of Revenue Authority by influencing the Govt. official. Before issuing a Periodic Patta, the Revenue Authority has to ascertain that, whether the proposed land in respect of undergoing process of P. Patta is vacant land or not.

No Periodic Patta can be issued if it is pre-occupied by some other person. In the instant case, when the Periodic Patta was issued the plaintiff was already in possession and Periodic Patta No. 2/97 was issued illegally without any basis. With regards to immovable property concerned, the physical occupation is always given priority in ownership as stated occupancy is the prima-facie evidence of ownership. It is therefore prayed to decree the suit in favor of the Plaintiff and pass such order(s) as this court deems fit in the interest of justice.

Mr. M. Zothankhuma, learned senior counsel for the defendant contended that that the plaintiff is claiming rights, title and interest over the Disputed Land on the strength of an alleged VC pass bearing 270 of 91 issued to the father of the plaintiff by the VC of Lushaicherra in the year 1991. Firstly, it may be pointed out that so called VC pass bearing no. 270 of 91 does not point out or does not make any clear distinction/specification as to the exact location of the land that the said VC pass would cover. It is also not clearly legible. In any event, as the disputed land pertains to agricultural land as per the submission of the plaintiff in his suit, the provisions of the Lushai Hills District (House Site) Acts, 1953 and the Mizo District (Agricultural Land) Act, 1963 will have to be scrutinized

again. He further contended that the plaintiff not having challenged the Periodic Patta no. 2 of 1997 and the subsequent Agricultural LSC No 4001003/09/27 of 2004, the plaintiff cannot be allowed to ask for consequential relief by taking reliance in **Government of Maharashtra V. Deokar's Distillery 2003(5) SCC 669**. However, the defendant no. 1 had been issued a legal and valid periodic patta by the concerned authority bearing periodic patta no. 2 of 1997 under Section 4(2) of the Mizo District (Agricultural Land) Act, 1963. That subsequently, the said periodic patta was converted into Agricultural Land Settlement Certificate bearing no. 400103/09/27 of 2004 under Section 4(2) of the Mizo District (Agricultural Land) Act, 1963. As such, by virtue of this allotment and by virtue of Section 7 of the Mizo District (Agricultural Land) Act, 1963, the defendant no. 1 has heritable and transferable right of use of the Disputed Land. He again emphasized that the plaintiff is claiming rights over the Disputed Land by virtue of a VC pass bearing 270/1991. As it has been reflected at length above, Village Councils do not have the authority to issue pass in respect of agricultural lands in the State of Mizoram. As such, the allotment in the first instance was illegal, null and void *ab initio* and that no rights over the Disputed Land ever accrued in favour of the plaintiff or his father. As such, the plaintiff not being the legal owner of the Disputed Land has no *locus standi* to file this present suit and claim legal rights over a land which was never his in the first place.

FINDINGS

Pre- Issue No. 1 Maintainability

There is no questions in regards to serving of Legal Notice, the suit is stamped at Rs. 34/- of court fees. In the instance, and by compelling to look into precedents binding force to this court, In the case of **Vanlalveni vs Tlanglawma** decided on 15/11/2002 and reported in (2005) 1 GLR 240, the Gauhati High Court has observed that-

“13. Incidentally, it may be noted from contents of the plaint photo copy of which is available in the case record, that the present appellant as plaintiff had confused whether the basic document upon which cause of action for the Suit was traced was a hand-note, or a promissory note or an agreement. Then again the suit was instituted for as a declaratory suit with fixed court fees of Rs. 25/- but the basic documents will show that there was only a pecuniary liability on the part of the deceased Rokima and not the present respondent Tlanglawma. The present respondent was only a witness to the said agreement/hand note. There is nothing to show that the respondent Tlanglawma ever incurred any liability under the said hand note/agreement. It was mentioned in the said agreement ext.p-1 that LSC had been handed over to the lender/ plaintiff but there is nothing in the judgment of trial court to show existence of any such document. Therefore, it will be opined that the judgment of the trial court was under misconception of law and without jurisdiction. It should have been either a Money Suit or Title Suit on mortgage. Therefore, there is a necessity to quash the entire proceedings starting from the original court upto the stage of first appellate court by exercising of the inherent power under Section 151 of C.P.C. for ends of justice. Such misconception of law cannot be allowed to be sustained”

In the case of **Parkash Chand Khurana Etc vs Harnam Singh & Ors** decided on 28 March, 1973 and reported in 1973 AIR 2065, 1973 SCR (3) 802, the Supreme Court has held that-

“The next contention of the appellants is that the award is merely declaratory of the rights of the parties and is therefore inexecutable. This

contention is based on the wording of clause 7 of the award which provides that on the happening of certain events the respondents "shall be entitled to take back the possession". We are unable to appreciate how this clause makes the award merely declaratory. It is never a pre-condition of the executability of a decree that it must provide expressly that the party entitled to a relief under it must file an execution application for obtaining that relief. The tenor of the award shows that the arbitrator did not intend merely to declare the rights to the parties. It is a clear intendment of the award that if the appellants defaulted in discharging their obligations under the award, the respondents would be entitled to apply for and obtain possession of the property."

In **Prakash Chand v. S.S. Grewal and Ors.**, reported in [1975] Cr. LJ. 679, (Full Bench) (Punjab and Haryana High Court), the petitioner had a decree in his favour declaring his dismissal from service to be illegal, void and of no effect. The Punjab Government did not reinstate him nor paid him the arrears of salary. He, therefore, filed a writ petition for taking contempt of courts proceedings against certain officials of the State Government. The Court held as under:

"A declaratory decree, in my opinion, cannot be executed as it only declares the rights of the decree-holder qua the judgment-debtor and does not in terms, direct the judgment-debtor to do or to refrain from doing any particular act or thing. Since there is no command issued to the judgment-debtor to obey, the civil process cannot be issued for the compliance of that mandate or command. The decree-holder is free to seek his legal remedies by way of suit or otherwise on the basis of the declaration given in his favour."

It is therefore attracted the provisions of Section 17 (iii) of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) vis. '*Consequential relief*'. The circumlocution of the above observations will answered the crux in the affirmative sense of the defendant No. 1. Meanwhile, as the suit is without having any consequential relief, these irregularities may be affirmative in favour of the plaintiff.

Pre-Issue No. 2 ***Cause of action/Locus Standi***

The admitted facts germinated from various evidences can be epitomized as follows-

1. WRC Pass No. 12 of 1960 previously issued in favour of the plaintiff was cancelled by the Government of Mizoram under Order Memo No. B. LRR. 28/73-76/131, Dated Aizawl, the 18th March, 1976.
2. Again the Permit No. 270 of 1991 Dt. 8.11.1991 was again issued in favour of the plaintiff by the Village Council, Lushaicherra in the suit land.
3. However, the defendant no. 1 obtained duly issued Periodic Patta No. 2 of 1997 in the suit land later converted the same into Agricultural LSC No 4001003/09/27 of 2004.
4. After duly conducted spot verification by the technical experts in the Department, the Government of Mizoram issued a letter under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004 titled "*WRC disputes between Pu C. Zakhuma and Pu Rilmansiaka at Lushaicherra village*" concluded that the disputed site is within the area of P. Patta No. 2/97 belonging to Pu C. Zakhuma, as such directed to retain the whole area by the said Mr. C. Zakhuma.

Obviously, whether *locus standi* existed or not and cause of action is in favour of the plaintiff or not lies in the existing land laws. As submitted by Mr. M. Zothankhuma, Section 3 of the Lushai Hills District (House Sites) Act, 1953 reads thus-

“3.Allotment of sites:

- (1) Subject to the provisions of sub-section (2) of this section, a Village Council shall be competent to allot sites within its jurisdiction for residential and other non-agricultural purpose with the exception of shops and stalls which include hotels and other business houses of the same nature.”

In this pursuance and may be because of usurpation of their powers, the Government of Mizoram reiterated that all the Village Councils in the then Aizawl and Lunglei Districts under the Lushai Hills District (House Sites) Act, 1953 are not competent to make allotment of land for agricultural purposes. Such Passes issued by the Village Councils cannot be honoured and regularized by the Government. Purchase of such Garden Passes and later applied for regularization is strictly prohibited by the Government.

It was further notified that such illegal allotment of Agricultural lands by the Village Councils is seriously viewed by the Government. The Local Administration Department had been requested to collect information on such unauthorized issue of the Garden Passes for the last three years and to take appropriate action against those Village Councils who failed to comply with the Acts mentioned above under Notification No. K-53011/28/92- REV/7 (A), the 31st August, 1992 published in the Mizoram Gazette, Extra Ordinary, Vol. XXI, 8.9.1992, Issue No. 163.

Further Section 4(1) of the Mizo District (Agricultural Land) Act, 1963 provides “*The Administrator or the Officers authorised by it, in writing, shall have the power to allot any vacant land for the purpose of farm.*”

Section 7(2) of the Mizo District (Agricultural Land) Act, 1963 provides “*No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied, unless registered and Patta obtained in accordance with the provisions of this Act.*”

Well known, the authority of village council on agricultural land is only extended under the Lushai Hills District (Jhuming) Regulation, 1954 for the purpose of distributing only one year time jhuming.

It may also be relevant Entry 45 of Seventh Schedule to the Constitution of India which runs as-

“45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.”

So is the entity and factual matrix, without having any valid authority, I find no cause of action in favour of the plaintiff to file the suit and no *locus standi* is found in favour of the plaintiff.

In other views, the Government of Mizoram, Revenue Department after conducting spot verification issued a letter under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004 titled “*WRC disputes between Pu C. Zakhuma and Pu Rilmansiaka at Lushaicherra village*” concluded that the disputed site is within the area of P. Patta No. 2/97 belonging to Pu C. Zakhuma, as such directed to retain the whole area by the said Mr. C. Zakhuma. The revenue authorities are more expertise in this field and no challenged of their performance/conduct as well as validity of the said Periodic Patta no. 2 of 1997 and the subsequent Agricultural LSC No 4001003/09/27 of 2004. It is relevant to note the observations of Hon’ble Supreme Court in the case of **Mig Cricket Club vs Abhinav Sahakar Edn.**

Society & Ors. decided on 5 September, 2011 in connection with Civil Appeal No. 2047 of 2007, the Supreme Court has held that-

“14. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary. The process involves consideration of competing claims and requirements of the inhabitants in present and future so as to make their lives happy, healthy and comfortable.

We are of the opinion that town planning requires high degree of expertise and that is best left to the decision of State Government to which the advice of the expert body is available. In the facts of the present case, we find that the power has been exercised in accordance with law and there is no arbitrariness in the same.”

More so, the contention of learned senior advocate for the defendant is also relevant as held by the Hon’ble Supreme Court in **Bachhaj Nahar vs. Nilima Mandal and Anr** (2008) 17 SCC 491. It is relevant to extract the principles enunciated in para 23 of the judgment which is as follows.

"23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like *res judicata*, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

In this view, as not challenged of the validity of Periodic Patta No. 2 of 1997 and the subsequent Agricultural LSC No 4001003/09/27 of 2004 belonging to the defendant and further not challenged the propriety of the findings of Govt. of Mizoram issued under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004, what mode of relief can be granted in favour of the plaintiff and to what extend.

Although Miss N. Lalzawmliani, learned counsel for the plaintiff contended that the possession of the suit land by the plaintiff for a long period of time will determine the ownership/title of the suit land. But, no reliance is taken to fructify the submissions. In this parallax, delay action for curing of wrongs and delayed for finding out of such wrongful act/offence will never give/bestow any rights to the wrongdoer in that wrongful act or offence is obviously the well accepted legal principles except in the case for claiming adverse possession recognized by the very recent observations of Hon’ble Supreme Court while writing of this judgment in **Khatri Hotels P.Ltd.& Anr. vs Union Of India & Anr.** decided on 9 September, 2011 in connection with Civil Appeal No.7773 of 2011 (Arising out of Special Leave Petition (C) No.22126 of 2009), the Supreme Court has held that-

“13. In the present case also the plaintiffs have failed to show their right, title or interest over the land in dispute. In such circumstances as the plaintiff has failed to show his legal right over the land in dispute therefore, plaintiff is mere encroacher upon the Govt. land. It seems that under the garb of present suit the plaintiffs are indirectly challenging the notification by which the village Kishan Garh was urbanized or land was placed at the disposal of DDA.”

Thus, this issue is also decided in favour of the defendant as without cause of action and *locus standi*. If it be decided in favour of the plaintiff, it will have a negative effect in the whole societal transformation by begetting

more wrongdoers acted without the basis of law and its efficacy. Which is beyond the realm of administration of justice.

Issue No. 3
Entitlement of relief

As per the findings in the above various issues, no relief can be granted in favour of the plaintiff except to rely in the unchallenged decisions of the Govt. of Mizoram under Memo No. C. 18016/42/2003 REV Dt. 16th March, 2004.

ORDER

In the above lengthy discussions on merits of the case, as inevitably, the suit is dismissed but no order as to costs.

The case shall stand disposed of

Give this order copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge- 2
Aizawl District: Aizawl

Memo No. DS/7/2005, Sr. CJ (A)/

Dated Aizawl, the 12th Sept., 2011

Copy to:

1. Mr. Lalchungliana S/o Rilmansiaka, Dawrpui Vengthar- Aizawl through Miss N. Lalzawmliani, Adv.
2. Mr. C. Zakhuma S/o Challiana (L), Diakkawn, Kolasib through Mr. M. Zothankhuma, Sr. Adv.
3. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram through Mr. R. Lalremruata, AGA
4. The Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA
5. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The Assistant Settlement Officer - II, Mamit District: Mamit through Mr. R. Lalremruata, AGA
7. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
8. Case record

PESKAR