

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

TITLE SUIT NO. 10 OF 1991

Plaintiffs:

1. Mr. Lalbiakvela
S/o Aichhunga (L)
Lunglawn, Lunglei
2. Mr. C. Thanchungnunga
S/o Dura (L)
Chanmari- Lunglei
3. Mr. P. Saichhinga (Dead)
S/o Rosiama (L)
Zobawk- Lunglei
Substituted by:
Smt. Thansangi
W/o P. Saichhinga (L)
4. Smt. Saihmingthangi
W/o Lalbiakvela
Lunglawn- Lunglei
5. Smt. Lalmangaihzuali
D/o Lalbiakvela
Lunglawn- Lunglei
6. Smt. Ramdingliani
D/o Lalbiakvela
Lunglawn- Lunglei
7. Mr. Pazawna
S/o Aichhunga (L)
Lunglawn- Lunglei
8. Mr. Lalhmingliana
S/o Bawka
Lunglawn- Lunglei
9. Smt. Lianzingi
D/o Aichhunga (L)
Lunglawn- Lunglei
10. Smt. Lalrothangi
D/o Vanchhuma
Lunglawn- Lunglei
11. Mr. Laltanpuia

S/o Thanchungnunga
Lunglawn- Lunglei

By Advocates

: 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary
Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Home Department
3. The Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department
4. The Director
Land Revenue and Settlement Department
Govt. of Mizoram
5. The Inspector General of Police
Govt. of Mizoram
6. The Commandant
2nd Battalion
Mizoram Armed Police
Luangmual- Lunglei
7. The Deputy Commissioner
i/c Revenue, Lunglei District
Lunglei
8. The Assistant Settlement Officer - I
Lunglei District: Lunglei
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocates

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

Date of Arguments : 16-09-2011

Date of Judgment & Order : 20-09-2011

BEFORE

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

JUDGMENT & ORDER

INTRODUCTORY

The plaintiff no. 3 Mr. P. Saichhunga was substituted by Smt. Thansangi as per the order of this court dt. 03.06.2004 due to untimely deceased on 21.2.2004 with regards to LSC No. 283 of 1989, the plaintiffs 4-11 are impleaded as per the order of this court dt. 25.05.2007.

BRIEF STORY OF THE CASE

The brief story of the plaintiffs case is that the plaintiff no.1 was issued Garden Pass No. 21/1974 by Lunglawn Village, Lunglei District measuring 25 bighas in area and he has been looking after his said garden by planting different kinds of plants and fruit bearing trees. That as far as the plaintiff no.1 is concerned, he spent not less than Rs.40,000/- to develop his said garden. From the beginning the plaintiff no.1 never had any problem arising out of his garden by way of either encumbrance or encroachment of any kind from anybody. As such, he enjoyed peaceful possession of his said garden till the unauthorized and illegal occupation of his said garden by the 2nd Battalion MAP. In 1986 he requested defendant no.8 to convert the said garden pass no.21 of 1974 into LSC but defendant no.1 told him that it would not be possible to settle the entire area in one name and he therefore requested to divide the land into different plots and issue LSCs in his name and his relatives names. All the LSCs belonging to all other plaintiffs in the instant case had been made from the land belonging to the plaintiff no.1 from the year 1974 when Garden Pass no.21 of 1974 was issued by the then Village Council of Lunglawn, Lunglei District. Before the LSCs were issued the plaintiff no. 1 sold apportion of his land measuring about 3 bighas to the plaintiff no.2 for a sum of Rs.75,000/- . Therefore the plaintiff no.1 and the plaintiff no.2 informed defendant no.8 that a portion of the plaintiff no.1 garden pass No.21 of 1974 was sold by him to plaintiff no.2 measuring about 3 bighas and they also requested defendant no.8 to issue LSC in the name of the plaintiff no.2, his wife and his son. After they submitted names of persons in whose names LSC should be made, the defendant no.8 accordingly issued LSC in the name of the plaintiff no.1&2 and their relatives. When the plaintiffs calculated the total area of land settled, they found that the area covered only about 12 bighas out of 25 bighas was settled. That means more than half of their land measuring about 13 bighas was taken away by defendants without the plaintiff no.1's consent and without the consent of the plaintiff no.2. That before converting the plaintiff no.1's garden pass into LSCs, no Periodic Patta in respect of his land was made or issued from the defendant no. 8. In May 1989 defendant no. 2 forcibly occupied the entire land belonging to him, plaintiff no. 2 and his relatives without giving any notice or compensation and constructed many buildings within their said land when they asked the defendant no.6 why they were occupying and constructing buildings within their land, they said that the said land was allotted to them by the Revenue Department. The fact is that till today the land is illegally occupied by the defendant no. 6 and has not been acquired by the government as per provision of the land acquisition laws and no compensation was paid to the plaintiff no.1&2 as well as to other LSC holder. The plaintiff no.1 also sold some portion of his land covered by LSC no. 283/89 to the plaintiff no.3 for a sum of Rs.30,000/- and the LSC was also mutated in the name of the plaintiff no.3 accordingly. All the LSC holders used to pay tax regularly. Plaintiffs no. 1&2 requested the defendants to vacate their land or give adequate compensation as per provisions of Land Acquisition Laws. However, they paid no heed. As a

result they issued notice u/s 80 of CPC to all the defendants through learned counsel. The total area of land covered under the LSCs belonging to all plaintiffs is 1,73,523.92 Sq.ft and the value of the land as per valuation certificate issued by defendant no.8 is Rs. 17,35,239.20p and over and above this amount we the plaintiffs are entitled to solatium% and interest@18% per annum w.e.f May 1989 over the sum. This total value, solatium and interest will have to be calculated on the basis of current rate or prevailing rate if and when compensation is paid to them. Besides they are entitled to rental fees w.e.f May 1989 which will be calculated as per prevailing rate. Therefore they prayed for reliefs/decrees in favour of the plaintiffs.

The defendants in their written statements contended that on thorough checking of the office records of both Assistant Settlement Office-I, Lunglei and Directorate of Land Revenue and Settlement Department, no Garden Pass No. 21/74 is issued by the Revenue Department. Meanwhile, it was found that Garden Pass No. 21/L of 1974 was issued to Pi Thankamlovi D/o Chhungbawnga, Zotlang with its location at Zotlang, Sihnehmual. It was later converted into P. Patta No. 289/76 in the name of Mr. Thangridema S/o Pawia, Zotlang. When forwarding of the said Garden Pass No. 21/74 for conversion into LSC by the ASO-I, Lunglei, it was found that the same is fake. When 11 House site LSCs were issued to the plaintiffs by the ASO-1, Lunglei, it was found out that the boundary description were based on the LEIPUI Pass No. L/24/73 with located at Lunglawn Village Council area. But no official record of LEIPUI Pass No. L/24/73 existed. Meanwhile, the defendant no. 6 possessed valid Pass No. Misc. DPL-16/75 superseded by DPL No. 83/77 covering an area of 150 acres when the fake LSCs were issued on 28.4.1989. But admitted that LSC No. 283/89 was mutated in the name of the plaintiff no. 3. Thus, prayed to dismiss of the suit with costs.

ISSUES

The following issues were framed on 28/6/2009 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 barred by law of limitation or not
3. Whether the plaintiff has a cause of action against the defendants.
4. Whether the plaintiffs are entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Lalbiakvela S/o Aichhunga (L), Lunglawn, Lunglei District (Hereinafter referred to as PW-1)
2. Mr.C. Thanchungnunga S/o Dura (L), Chanmari, Lunglei (Hereinafter referred to as PW-2)
3. Mr. C. Lalzara S/o Aichhunga (L), Ramhlun Venglai-Aizawl (Hereinafter referred to as PW-3)
4. Mr. R. Thankamlova S/o R. Biakvela (L), Ramhlun Vengthar -Aizawl (Hereinafter referred to as PW-4)

The **PW- 1** in his examination in chief deposed that he was issued Garden Pass No. 21/1974 by the Village Council of Lunglawn Village with an area of 25 Bighas, he developed the said land by spending huge amount of money for the same. He never have had any problems till when the 2nd Bn MAP illegally occupied his said garden. As refused to issue one LSC, different LSCs were issued in the said land by the Revenue authorities. All the LSCs holds by different plaintiffs were emanated from the year 1974 when Garden Pass No. 21 of 1974 was issued by the then Village Council of Lunglawn, Lunglei District. Before issuance of such LSCs, he sold apportion of his land measuring 3 Bighas to the plaintiff no. 2 for a sum of Rs. 75,000/-. When they calculated the total area of land settled, they found that the area covered was only about 12 Bighas out of 25 bighas was settled. Morethan half of his land measuring about 13 Bighas was taken away by the defendants without his consent and without the consent of the plaintiff no. 2. He had also sold some portion of his land covered by LSC No. 283/89 to the plaintiff no. 3 for a sum of Rs. 30,000/- and the LSC was also mutated in the name of the said plaintiff no. 3. The total area of land covered under LSCs belonging to all plaintiffs is 1,73,523.92 Sq. ft. and the value of the said land as per Valuation Certificate issued by the defendant no. 8 is Rs. 17,35,239.20, they further entitled solatium % and interest @ 18% per annum with effect from May, 1989 over the sum total.

He further deposed that-

Ext. P-1 is an application for re-construction of plaint
Ext. P-2 is a copy of plaint submitted by him
Ext. P-3 is a copy of Legal Notice dt. 30/3/1990
Ext. P-4 is a copy of application of learned P/L
Ext. P-4(a) and (b) are letter from Asst. Registrar, GHC and Judgment & Order dt. 17.11.2006
Ext. P-5 is an application dt. 25/5/2007
Ext. P-6 is an application under O. 22, R. 3 of CPC
Ext. P-6(a) is a copy of Heirship Certificate dt. 24th May, 2004
Ext. P-7 is W/O submitted by plaintiffs.

In his cross examination, he deposed that the suit was occupied by the 2nd Bn. MAP since 1986 and before that, it was also occupied by the CRPF but he did not make any claims on the said CRPF.

The **PW- 2** in his examination in chief deposed that the plaintiff no. 1 has a plot of land under Garden Pass No. 21/1974 located at Lunglawn village and in 1989, the plaintiff no. 1 sold to him some portion of the said land at Rs. 75,000/- admeasuring about 1.17 Bighas. As applied LSC No. 271 of 1989 was issued in favour of himself and the other LSCs were issued in favour of the plaintiff no. 1 and his relatives with regards to Garden Pass No. 21/1974. They thereafter knew that the defendants took out about 13 bighas of their land without their consent. Since May, 1989, the defendant no. 2 forcefully occupied the suit land. The total area of land covered under LSCs belonging to all plaintiffs is 1,73,523.92 Sq. ft. and the value of the said land as per Valuation Certificate issued by the defendant no. 8 is Rs. 17,35,239.20. Ext. P- 1 (b), Ext. P- 2 (b), Ext. P- 2 (d), Ext. P- 2 (f), Ext. P- 2 (h), Ext. P- 2 (j), Ext. P- 2 (l), Ext. P- 2 (n) and Ext. P- 2 (p) are his true signatures.

In his cross examination, he further deposed that the original area of Garden pass No. 21/1974 was 25 Bighas and the total area covered by all the LSCs made therefrom is only 12 Bighas.

The **PW- 3** in his examination in chief deposed that the plaintiff no. 1 has had a land in 1973 as Village Council Pass at Luangmual, Lunglei and he developed as a garden since 1974 and he used to work in that garden. The MAP occupied the suit land without paying any compensation.

In his cross examination, he further deposed that he saw the Garden pass of the plaintiff no. 1. But he did not aware the date and time of issuance of LSCs to the plaintiff no. 1. Although he saw the LSC of the plaintiff, he did not know the area of the said land. He did not know the year of occupation of the suit land by the MAP. He witnessed that Mr. C. Thanchungnunga had purchased some portion of the land of the plaintiff no. 1. He denied that the plaintiffs no 1 and 2 did not develop their land by cultivating.

The **PW- 4** in his examination in chief deposed that he witnessed that the plaintiff no. 2 had purchased his three LSCs from the plaintiff no. 1 but occupied by the MAP without paying any compensation at all and without the consent of the plaintiffs. Before occupation of the suit land by the MAP, they used to work by cultivating subsidiary jhuming and also witnessed the plantation of the plaintiffs 1 and 2.

In his cross examination, he further deposed that although he affirmed that the plaintiff nos. 1 and 2 have had LSCs but he did not know the exact area of the same. He used to cultivate subsidiary jhum land with the plaintiffs in the suit land. But he did not know the year when the MAP started occupation of the suit land.

For the defendants:

The defendants had also produced the following witnesses namely-

1. Mr. M.C. Lalhmingthanga, Sub-Inspector, 2nd Bn. MAP (Hereinafter referred to as DW-1)
2. Mr. S. Laltanpuia, Surveyor, Land Revenue & Settlement Department, Govt. of Mizoram (Hereinafter referred to as DW-2)

The **DW- 1** in his examination in chief deposed that the landed documents of the plaintiff no. 1 was not traceable in the Revenue office, Lunglei as Garden Pass No. 21/1974 which reveals that 11 LSCs issued in favour of the plaintiff no. 1 will be fake documents as the said LSCs were issued on the basis of the said Garden Pass. The suit land was occupied by the CRPF since 1975 and later issued DPL No. 16 of 1975 by the Revenue Authorities in the name of IGP, Mizoram which was superseded by DPL No. 83 of 1977 in the name of Secretary, Home Department and again superseded by DPL 7 (D) of 1988. Necessary no objection certificate was not obtained for issuance of the LSCs of the plaintiff as alleged done in 1989. After lapse of 16 years from issuance of DPL No. 16 of 1975, the instant case is filed. He further deposed that his information is based on accurate department record and after consulting concerned department officials.

In his cross examination, he deposed that he joined MAP as Constable in 1988. He did not see the Garden Pass of the plaintiff and he also did not aware whether cancelled by the Revenue authorities or not. He did not know various LSCs annexed in their written statement viz. (i) LSC No. 283/89 in the name of Mr. P. Saichinga (ii) LSC No. 272/89 in the name of Smt. Saihmingthangi (iii) LSC No. 278/89 in the name of Mr. Pazawna (iv) LSC No. 263/89 in the name of Smt. Ramdingliani (v) LSC No. 262/89 in the name of Smt. Lianzingi (vi) LSC No. 279/89 in the name of Smt.

Lalhmagaihzuiali (vii) LSC No. 270/89 in the name of Mr. Lalbiakvela (viii) LSC No. 267/89 in the name of Smt. Lalhmingliani (ix) LSC No. 265/89 in the name of Smt. Lalrothangi (x) LSC No. 271/89 in the name of Mr. C. Thanchungnunga and (xi) LSC No. 282/89 in the name of Mr. Laltanpuia, were cancelled by the Revenue authorities or not. Although alleged as fake of the aforesaid LSCs, no criminal case was initiated on it.

The **DW- 2** in his examination in chief deposed that the version of the plaintiffs like conversion of LSCs from Garden pass No. 21 of 1974 was impossible as Garden Pass No. 21 of 1974 was fake documents as no record was found in the Revenue office. In the revenue practices, after issuance of House Pass, LSC was issued accordingly. More so, during 1973 – 1975, no periodic patta was issued by the Revenue department. Garden Permit Pass No. 21 of 1974 was issued in favour of Smt. Thankamlovi and mutated in the name of her son Mr. Z.D. Thangridema in 1976 as Garden Pass No. 289 of 1976. On perusal of records, the deletion of Leipui Pass No. L/24/73 which is alleged previous pass in the said LSC boundary descriptions elicited as figment and concocted. DPL No. 16 of 1975 was issued by the Revenue Authorities in the name of IGP, Mizoram which was superseded by DPL No. 83 of 1977 in the name of Secretary, Home Department and again superseded by DPL 7 (D) of 1988. If the alleged LSCs of the plaintiff were made, no objections from the Home Department will be required. The Revenue Department already circulated and published that all LSCs alleged issued from Garden Pass No. 21/74 were all fake. He further deposed that-

Ext. D-1 is written statement

Ext. D-1 (a) is the signature of the then Under Secy. to GOM, Revenue

Ext. D-2 is the Garden Permit No. 21 of 1974 issued in the name of Mrs. Thankamlovi

Ext. D-3 is P. Patta Garden No. 289 of 1976 issued in the name of Mr. Z.D. Thangridema

Ext. D-4 is the fake P. Patta Garden No. 21 of 1974

Ext. D-5 is the fake LSC 283 of 1989 issued in the name of Mr. P. Sawichhinga

Ext. D-5 (a) is the boundary description of LSC 283/1989

Ext. D-6 is the faked LSC No. 270 of 1989 issued in the name of Lalbiakvela

Ext. D- 6 (a) is the boundary description of LSC No. 270 of 1989

Ext. D-7 is a fake copy of LSC No. 271 of 1989

In his cross examination, he deposed that since 1989, he joined Revenue Department as Field Assistant. He admitted that Mr. R.L. Laltawnga, MCS has held ASO-II, Lunglei and also known remains in 1989. It appears that the signatures of Mr. Laltawnga in LSC No. 265/1989, 271/1989 and 282/1989 were the signatures of the said Mr. Laltawnga. The Government fails to make an order for cancellation of Ext. D- 4 to Ext. D-7 till date. He admitted that the LSCs of the plaintiffs were issued by the Revenue Department. But he denied that such LSCs were legally issued in due process of law. He did not know that whether No Objection Certificate was obtained from the Home Department for issuance of the said LSCs or not.

POINTS OF RIVALRY

Mr. L.H. Lianhrima, learned counsel for the plaintiff after revealing the averments in the plaint and brief story of the case submitted that the Plaintiff examined four witnesses namely Shri. Lalbiakvela, Shri C. Thanchungnunga, Shri Thankamlova and C. Lalzara. On cross examination of the PW No.1 Shri. Lalbiakvela on oath the credibility of the P/W No.1 could not be shaken as the P/W No.1 did not change his stand throughout the proceeding even after he was cross examined by the Ld D/L thoroughly. The Plaintiff/PW. No. 1 exhibited 9 documents without objection from the defendants. On his cross examination, the plaintiff witness no.1 confidently asserted that his landed property vide Garden Pass No. 21 of 1974 covers an area of 25 bighas and for the said purpose the area of the land was actually measured and within the said land fruit bearing trees were planted. That the plaintiff pass was converted into different LSC as per the Revenue Law in force and the actual measurement was taken before the issuance of different LSC's. He also stated that the land actually occupied by the 2nd MAP battalion does fall within his land and the suit land was occupied by 2nd battalion MAP since 1986 and before that his land was occupied by CRPF for about 2 years. The plaintiff further stated that he had submitted a claim for payment of compensation to the Govt. of Mizoram after 2nd battalion MAP has occupied the land but he did not remember the time when he submit the said application but he had not received any response from the Government. He further denied that his garden Pas and LSC were obtained illegally and he also denied that rental charges of his land from the year 1986 is not entitled by him.

Mr. Lianhrima further went on that the PW No.2 also could not be shaken as the P/W No.2 not change his stand even after he was cross examined by the Ld AGA thoroughly. On cross examination, the PW stated that it is the original area of Garden Pass 221/1974 was 25 bighas and the total area of LSCs made therefrom is 12 bighas. He further stated that after he purchased his 1.17 bighas's landed property he converted into LSC's in different names such as himself, his wife, his son and his daughter. He also reasserted that he is entitled to rental charges and compensation.

He also delved that the PW-3 also clearly stated on his examination in chief that previously Shri Lalbiakvela had obtained VC pass in 1973, after that he converted into LSCs. Since 1974 he used to plant different kind of vegetables in his landed property and I also used to go there. In the above mentioned landed property of Shri Lalbiakvela, MAP occupied the land but no compensation was given to him and hence, the present suit. On cross examination by the Ld AGA, the PW-3 also stated that he had seen the VC Pass of Shri Lalbiakvela but he did not know the area of the same. He further stated that he know that some portion of Shri Lalbiakvela 's land was purchased by Shri C. Thanchungnunga and both of them planted some kind of vegetables in their respective land. The PW-4, Shri. C. Lalzara also stated on his cross examination as follows:- I know that the Plaintiff no 1&2 are hold their respective LSCs and I saw the plaintiff no 2 LSC but I do not know the area cover by the said LSC. I know that 2nd battalion MAP have not paid their rental compensation to the plaintiffs. In the said landed property the plaintiffs and I used to make Leipui for planting vegetables. He flatly denied that as per agreement made between the plaintiffs and 2nd battalion MAP, 2nd battalion MAP occupied the said landed property.

The Defendant also produced two (2) witnesses namely Lalhmingthanga SI 2nd MAP and S. Laltanpuia Surveyor, LR&SD Lunglei. On his cross examination, DW No-1 for the defendant no.2,5&6 could not re affirm what he had stated in his examination in chief affidavit by stating the following points:- (a) Lalbiakvela PP No.21 of 1974 Revenue Department ten an pek chhuah hi Revenue Department ten an cancel leh cancel loh ka hre lova hmuh pawh ka la hmu ve hek lo.(b)Kan Sorkar written statement thehluh hian Annexure-3 ah Lalbiakvela garden Pass No.21 of 1974 thil tel a ni a, LSC No. 283/1989 P.Saichhinga hming a awmte.....hi Revenue Department in an cancel tawh leh tawh loh office record atang chuan hriatna ka nei lo.(c) LSC No. 265 of 1989 Lalrothangi hminga awm te LSC 271 of 1989 C.Thanchungnunga hminga awm te LSC 282 of 1989 Laltanpuia hminga awm te pawh hi Revenue in an cancel-na thu hriat ani lo. (d) Pu.Khawtinthanga ASO Lunglei-in kan commandent 2nd Battalion MAP hnena Pu Lalbiakvela hnena Garden Pass No.21 of 1974 hi Pu Lalbiakvela hnenah pek anilo thu Dt 27.08.1990 khan a rawn sawi ka tihna lehkhah hi court-ah kan thehlut lova, case record ah hmuh tur a awm lo.Tin, Garden Pass No.21/74 hi Pi Thankamlovi of Zotlang hminga awm thu a sawi ka tih pawh hi a lehkhah ber court a thehluh a nihloh avangin court record ah hmuh tur a awm lo. (e) Heng LSC sawmpakhat(11) PP/Garden Pass no 21 of 1974 atanga siam te hi a lem ngei a ni ka ti na a, criminal case emaw FIR emaw Lunglei PS ah thehluh anih elh nih loh pawh ka hre lo....criminal case siam anih thu office record ah engmah kei chuan ka hmu lo.(f) Kum 1988 atang khan 2nd Bat MAP te hian tuna kan awmna hmun hi kan luah tan ani. (g) Record a alan dan chuan Dt2.4.1990 khan legal notice Dt 30.3.1990 chu 2nd Bat MAP Lunglei defendant no.6 hian a dawng ngei a mahse vawiin thleng hian heng LSC pechhuaktu Revenue Department leh LSC holders te hi Court-ah kan khin thu hriat ala ni lo.(h) DPL No. 16 of 1975 pek kannih hma hian pass dang kan neih hriat ani lo. (i) *Heng LSC a chung a tarlan te hi a hmunah Revenue Department hotute nen a ram neitu te leh Police Department hruaitute hovin spot verification neih nita sela thudik tak chu hai lan theih ngei anih ka ring....*

Mr. L.H. Lianhrima and Mr. Lalhriatpuia also stated that the DW No.2 S. Laltanpuia, Surveyor, LR&S Dept also deposed before the court on cross examination as follows : - Exhibit D-2 to Exhibit D-6 issue lai hian Sorkar hna kala thawk lova, heng pass atan hian spot verification emaw demarcation emaw titu ka ni lo. LSC No.265/1989,271/1989, 282 of 1989 a ASO II, Lunglei District seal chungah hming signed tu hi RL Tawnga hming sign ni ngei chuan ka hria. Pu RL Tawnga hming sign hi tihchawp (forged) ni sela chuan Pu Tawnga hian FIR Police Station ah a thehluh ngei tur niin a langa, mahse a thehluh awm keichuan ka hrelo.Exhibit D-4 to Exhibit D-7 te hi vawiin ni thlengin Sorkarin cacellation Order ala tichhuak lo. Plaintiff te LSC pechhuaktu hi Revenue department an ni tih hi ka pawm... It is voluminously clear from the deposition of the DW No 1 & 2, that the defendant government did not have any documentary evidence to disprove that the plaintiffs landed property are illegally occupied by 2nd Bn MAP. As such, the Plaintiffs are entitled to receive the reliefs claimed by them in their plaint as they had successfully proof their case.

Learned counsels for the plaintiffs concluded that taking into account all the evidences duly adduced by the witness of the rival parties and the materials available on record, it is crystal clear that the plaintiff is entitled to the reliefs claimed by them. At the same time, the Plaintiffs are in agreement with the defendants for spot verification in order to ascertain on whether the land of the Plaintiffs have been occupied by the defendants.

On the other hand, Mr. R. Lalremruata, learned AGA for the defendants after shorting down of the brief story and delving of evidences argued that from the plaint, written statement and depositions of witnesses, it is pretty clear- (i) That the suit land had been occupied by C.R.P.F since 1975 and continued to occupy the same by 2nd M.A.P. since 1988 till date. (ii) That DPL No. 16 of 1975 in respect of the suit land was issued by Revenue Department in the name of I.G.P., Mizoram which was superseded by DPL No.83 of 1977 in the name of Secretary, Home Department, Govt. of Mizoram which was again superseded by DPL-7(D) of 1988 issued by the Director, Land Revenue & Settlement Department, vide memo No L-11028/2MAP-L/88-DTE (REV) dt. 16.11.1988. (iii) That DPL-7(D) of 1988 was issued on 16.11.1988 prior to the alleged issuance of the Plaintiff's L.S.Cs. (iv) That the plaintiffs do not have a documentary proof to show that they are allotted land passes in respect of the suit land. (v) That no P. Patta Garden No. 21 of 1974 was issued to Pu C. Lalbiakvela, the plaintiff No.1. In fact No P. Patta was issued during the period of 1973-1975 by the Revenue Department. Meanwhile Garden permit pass No. 21 of 1974 was issued to Pi Thankiamlovi. (vi) That since no P. Patta garden No. 21 of 1974 or Garden permit pass No. 21 of 1974 or Garden pass No. 21 of 1974 was issued to the plaintiff No. 1, then all the L.S.Cs of the plaintiffs claimed to have been issued out of Garden pass No. 21 of 1974 are all fake L.S.C.s. That the Revenue Department Vide, Memo No. T. 15016/3/92-DISP/DTE (REV) dt 14.11.2000 stated that 11 LSCs converted from Garden P. Patta No. 21/74 are fake ones. (vii) That since the Home Department has been occupying the suit land since 1975 till date, 'NOC' had to be obtained for issuance of L.S.Cs of the plaintiffs. However in the instant situation, no such 'NOC' was obtained from the Home Department. (viii) That surprisingly the plaintiff's claimed of Garden Pass No. 21 of 1974 is just one year prior to DPL No.16 of 1975. Again, the plaintiffs thought that the 2nd MAP started occupying the suit land from 1989 May as per para 6 of the plaint, then their faked L.S.Cs appeared to have been issued on April 1989, one year prior to the alleged occupation of the suit land by the defendants. It is pertinent to mention here that the 2nd MAP started occupying the suit land from 1988 as stated by defendant No 2, 5, 6 witnesses on cross examination. (ix) That L.S.C. is never issued from P. Patta. In fact, House Pass is issued first and only then L.S.C. is issued. In the instant case, it is absurd that L.S.Cs were issued without issuance of House Pass. (x) That even if the alleged P. Patta Garden No. 21 of 1974 was issued, it was for a period of 1974-1979, and that it is treated as cancelled automatically as it was not renewed 6 months from the date of expiry i.e. 12/4/1979. Hence there is no question of converting into L.S.Cs at all. (xi) That on careful scrutiny of the alleged L.S.C.s of the plaintiffs it can be seen that- The entries wherein the previous passes had to be mentioned are blank. (xii) The entries wherein the approval of Government/Director, Land Revenue & Settlement Department, Mizoram had to be mentioned are blank which clearly reveals that there is no Govt. approval. (xiii) In the draft boundary descriptions, the previous passes were firstly recorded as 'Leipui No. L/24/73' which were all strike out. (xiv) That other connected papers of the alleged L.S.Cs of the plaintiffs like detail order of surveyor for demarcation, Govt. approval for issuance of those alleged L.S.Cs, site plan, NOC, Land valuation certificate, etc., are nowhere to be seen. (xv) That the present suit was filed 16 years after issuance of DPL No. 16 of 1975. (xvi) That the village councils are not competent to issue passes other than house site pass.

Mr. R. Lalremruata concluded and epitomized his arguments that the suit land never belongs to the plaintiffs at any point of time.

- a) The plaintiffs had never occupied the suit land.

- b) The alleged LSCs of the plaintiffs are fake LSCs.
- c) The alleged Garden no. 21/74 is a fake pass.
- d) The plaintiffs do not have any documentary proof of their claim.
- e) The suit was filed 16 years after issuance of DPL no. 16 of 1975.

In the facts and circumstances mentioned above he therefore prayed to dismiss the present suit with cost, cancel all the fake LSCs of the plaintiffs and direct the plaintiffs not to disturb the peaceful enjoyment of the suit land by the defendants or as this court may deem fit and proper.

FINDINGS

Issue No. 1

Maintainability of the suit

The plaint is properly drafted, accompanied by Verification duly signed by the plaintiff. With regards to requisite court fees, whilst the suit is filed in 1991, the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is made effective from 22nd April, 1997 vide, Notification No. G. 17013/8/96- FFC, the 21st July, 1997 published in the Mizoram Gazette, Vol. XXVI, 25.7.1997, Issue No. 30 [Part- II (A) p. 3]. Thus, there will be no question of lacunae on requisite court fees in the plaint. Howsoever, the other minor lacunae may be filled up as exempted the region from the circumlocution of CPC under the proviso to S. 1 of the CPC as the then tribal areas under the Sixth Schedule to the Constitution of India till 21st January, 1972 read with S. 21 of the Mizoram Civil Courts Act, 2005 whilst the suit is filed before proper insulation of judiciary from the executive as desired under Article 50 of the Constitution of India even from the miscellany of O. VII R. 1 of the CPC and O. VI R. 15 of the CPC as supplemented by the observations of Hon'ble Apex Court in **Mahadev Govind Gharge & Ors vs Spl. Land Acquisition Officer**, Upper Krishna Project, Jamkhandi decided on 10 May, 2011 in connection with Civil Appeal Nos. 5094 of 2005, the Supreme Court has observed thus-

“35. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances.

36. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them.”

Also vide, **Shreenath & Another vs Rajesh & Others**, 1998 AIR 1827, 1998 (2) SCR 709, 1998 (4) SCC 543, 1998 (2) SCALE 725, 1998 (3) JT 244: **M.S. Grewal v. Deep Chand Sood**, (2001) 8 SCC 151: **Sushil Kumar Sen v. State of Bihar** (1975) 1 SCC 774: **The State of Punjab and Anr. v. Shamlal Murari and Anr.** (1976) 1 SCC 719. I therefore find no irregularities which vitiate the proceedings.

Issue No. 2

Whether the suit is barred by law of limitation

In paragraph 14 of the plaint, it was stated that the cause of action had arisen in 1989 when the defendant no. 6 had occupied the suit land

and continued the same. Thus, as permissible under Article 65 (viz. twelve years) in the Schedule of the Limitation Act, 1963, I find that there is no question of barring of the suit by the law of limitation.

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 the instant case and in the version of the plaintiff in their pleadings, the plaintiff no. 1 by obtaining Garden Pass No. 21 of 1974 issued by the Village Council concerned claims the record of rights. Although the plaintiffs later submitted that the said Garden Pass was converted into a series of LSCs. No documents in support of their pleadings and exhibits were made to vigil on locus standi of the plaintiffs. Meanwhile, the defendants as they have a confidence submitted and exhibited/annexed a series of alleged fake LSCs which appears issued in favour of the plaintiffs. The Hon'ble Supreme Court dealt similar issues when the concerned parties fails to produce essential documents in the pleadings very recently in **Lalrivenga & Anr. vs State Of Mizoram & Ors.** decided on 13 September, 2011 in connection with Civil Appeal No. 7825 of 2011 (Arising out of SLP(C) No.18850 of 2006), the Supreme Court has held that-

“In the present case, no material was produced before the High Court and none has been produced before this Court to show that notification dated 14.5.1985 issued under Section 4(1) of the Act had been published in the Official Gazette. Therefore, the High Court was not justified in declining relief to the appellants by assuming that the said notification must have been published in the Official Gazette because other notifications including the one issued under Section 6 was published in the Official Gazette.”

Howsoever, whether *locus standi* existed or not and cause of action is in favour of the plaintiff or not lies in the existing land laws. 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. Moreover, 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."

Although the inter se Village Council Pass is not transferable at all. Compliance of rigour provisions is not also found on the record if the said Garden Pass is transferable as submitted by the plaintiffs.

Thus, I totally failed to see that the plaintiffs has a right to sue in the suit land and the instant issue is negative for them.

Issue No. 4

Whether the plaintiff is entitled to the relief claimed or not. If so to what extend.

On perusal of case records, the defendants adversely produced a series of LSCs copies pertaining to the instant suit viz. (i) LSC No. 283/89 in

the name of Mr. P. Saichinga (ii) LSC No. 272/89 in the name of Smt. Saihmingthangi (iii) LSC No. 278/89 in the name of Mr. Pazawna (iv) LSC No. 263/89 in the name of Smt. Ramdingliani (v) LSC No. 262/89 in the name of Smt. Lianzingi (vi) LSC No. 279/89 in the name of Smt. Lalmangaihzuai (vii) LSC No. 270/89 in the name of Mr. Lalbiakvela (viii) LSC No. 267/89 in the name of Smt. Lalhmingliani (ix) LSC No. 265/89 in the name of Smt. Lalrothangi (x) LSC No. 271/89 in the name of Mr. C. Thanchungnunga and (xi) LSC No. 282/89 in the name of Mr. Laltanpuia. The defendants vehemently submitted that they all are fake LSCs without authority and not in conformity with the existing land laws in respect of its issuance as clearly submitted by Mr. R. Lalremruata, learned AGA.

In the written arguments, Mr. R. Lalremruata, learned AGA, Directorate of Land Revenue and Settlement Department, Govt. of Mizoram also decided that all the aforesaid LSCs were fake and curbed to collect revenue from them as mentioned in letter Memo No. T. 15016/3/92-DISP/DTE (REV), Dated Aizawl, the 14th Nov/2000 issued to the Assistant Settlement Officer-I, Lunglei District.

For summing up of all the above findings, no relief can be granted in favour of the plaintiff. It can be answered as per the very recent observations of Hon'ble Supreme Court 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.”

Although the plaintiffs may entitle some relief like crop damage if the evidence or the case determines, but such is not the relief sought in the plaint and is beyond pleadings. It is relevant to look the observations in **National Textile Corp.Ltd. vs Nareshkumar Badrikumar Jagad & Ors.** decided on 5 September, 2011 in connection with Civil Appeal No. 7448 of 2011, the Supreme Court has held that-

“7. Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that as a rule relief not founded on the pleadings should not be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide: M/s. Trojan & Co. v. RM N.N. Nagappa Chettiar, AIR 1953 SC 235; State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299; and Kalyan Singh Chouhan v. C.P. Joshi, AIR 2011 SC 1127).”

In a nutshell, I had failed to see the mode of relief to be granted in favour of the plaintiffs.

ORDER

The inevitable conclusion is therefore to dismiss of the suit, although deserved costs, no costs will be imposed to the plaintiffs as they appears not in a position to add more costs in addition to lawyers fee. Thus, the case is dismissed on merit and no order as to costs of the suit.

The case shall stand disposed of accordingly.

Give this copy to all concerned.

Given under my hand and seal of this court on this 20th September, 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- 2
Aizawl District: Aizawl

Memo No. TS/10/1991, Sr. CJ (A)/

Dated Aizawl, the 20th Sept., 2011

Copy to:

1. Mr. Lalbiakvela, S/o Aichhunga (L), Lunglawn, Lunglei C/o Mr. L.H. Lianhrima, Adv.
2. Mr. C. Thanchungnunga, S/o Dura (L), Chanmari- Lunglei C/o Mr. L.H. Lianhrima, Adv.
3. Mr. P. Saichhinga (Dead) S/o Rosiama (L), Zobawk- Lunglei through Smt. Thansangi, W/o P. Saichhinga (L) C/o Mr. L.H. Lianhrima, Adv.
4. Smt. Saihmingthangi, W/o Lalbiakvela, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
5. Smt. Lalmangaihzuai D/o Lalbiakvela, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
6. Smt. Ramdingliani, D/o Lalbiakvela, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
7. Mr. Pazawna S/o Aichhunga (L), Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
8. Mr. Lalhmingliana S/o Bawka, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
9. Smt. Lianzingi, D/o Aichhunga (L), Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
10. Smt. Lalrothangi, D/o Vanchhuma, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
11. Mr. Laltanpuia S/o Thanchungnunga, Lunglawn- Lunglei C/o Mr. L.H. Lianhrima, Adv.
12. The State of Mizoram Through the Chief Secretary, Govt. of Mizoram C/o Mr. R. Lalremruata, AGA
13. The Secretary to the Govt. of Mizoram, Home Department C/o Mr. R. Lalremruata, AGA
14. The Secretary to the Govt. of Mizoram, Land Revenue & Settlement Department C/o Mr. R. Lalremruata, AGA
15. The Director, Land Revenue and Settlement Department, Govt. of Mizoram C/o Mr. R. Lalremruata, AGA
16. The Inspector General of Police, Govt. of Mizoram C/o Mr. R. Lalremruata, AGA
17. The Commandant, 2nd Battalion, Mizoram Armed Police, Luangmual- Lunglei C/o Mr. R. Lalremruata, AGA

18. The Deputy Commissioner i/c Revenue, Lunglei District, Lunglei C/o Mr. R. Lalremruata, AGA
19. The Assistant Settlement Officer – I, Lunglei District: Lunglei, Land Revenue and Settlement Department, Govt. of Mizoram C/o Mr. R. Lalremruata, AGA
20. P.A to Hon'ble District & Sessions Judge, Aizawl Judicial District, Aizawl
21. Case record

PESKAR