

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

CIVIL SUIT NO. 01 OF 2001

Plaintiffs:

Mr. L.T. Kima Fanai
S/o L. Piandenga
R/o Electric Veng, Aizawl

By Advocate's : Mr. C. Lalramzauva, Sr. Adv.

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the Govt of Mizoram.
2. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl.
3. The Director
Land Revenue & Settlement Department
Govt. of Mizoram, Aizawl.
4. The Deputy Commissioner, i/c Revenue
Aizawl District, Aizawl.
5. The Assistant Settlement Officer -II,
Land & Revenue Settlement Department
Aizawl District, Aizawl.
6. Mr. Lalbiakthanga
S/o Lalsangliana(L)
'Thlihiaun Run', Chaltlang Venglai, Aizawl.

By Advocates :

For the defendant no. 1-5 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendant no. 6 : Mr. W. Sam Joseph

Date of Arguments : 04-04-2012

Date of Judgment & Order : 09-04-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
Senior Civil Judge-1
Aizawl District: Aizawl

JUDGMENT & ORDER

FACTUAL SCENARIO

The plaintiff's case in brief is that in the year 1996, the plaintiff had applied for allotment of a vacant plot of land at Thuampui Veng on the side of National Highway between the BRTF and the land of Sh. Thangmawia. However, his application along with the documents were misplaced by the Revenue Department and a fresh application was submitted by him in the year 1998 for the same plot of land. In support of his application he had submitted a No-Objection Certificate dt.23/4/99 given to him by Sh. Thangmawia, R/o Electric Veng, Aizawl in his favour and a certificate dt.28/6/99 issued by the Secretary, V.C. of Thuampui, certifying that the plot of land applied for allotment by the plaintiff was a vacant land. Before the allotment of the land was made, a query was made from the Revenue Department as to whether the said land was included within the acquired area of the BRTF. In this connection there was correspondence between the Govt. and the defendant no.3 vide letter no.K.52012/88/96-REV/Vol. I Dt.3/7/2000 wherein the Under Secretary to the Govt. of Mizoram, Revenue Department had requested the defendant no.3 to clarify whether the BRTF has any objection or not for allotment of the said land in the plaintiff's favour and to ascertain whether the same is situated within the acquired area of BRTF. After the matter was clarified, the allotment of House Site in the plaintiff's favour was approved by the Govt. vide letter no.K.52012/88/96-REV/Vol. I Dt.7/8/2000 and the same was communicated by the defendant no.3 to the ASO-II, Aizawl District, Aizawl vide letter No.HP.1010/3/96/DTE(REV)L-144 Dt.14/8/2000 and a copy of the said letter was also furnished to the plaintiff. Thereafter, a House Pass No.580/2000 was issued on 16/8/2000 U/s 5 of the Mizo District (Land and Revenue) Act,1956 to the plaintiff mentioning therein the exact location of the said plot of land and the dimension thereof wherein the area of the said plot of land covered by House Pass No.580/2000 has been indicated as 246 Sq. m. Soon after obtaining a copy of the said House Pass, the plaintiff had erected boundary pillar as required by the terms and conditions of the said Pass and the plaintiff had also constructed an Assam Type building within the said pass area, by spending about Rs.30,000/-. And now, the said house building along with the land is occupied and is under the plaintiff's possession. In fact, the plaintiff have rented out the Assam Type Building constructed by him to Sh. Thlenga at a monthly rent of Rs.900/-. Further, when he had constructed the Assam Type building, the answering defendant had not cleared the suit land nor had he put up his name and Pass Number in any conspicuous place in the suit land. After complying with the terms and conditions as provided by the said House Pass, the plaintiff had also applied for settlement and conversion of the said House Pas to LSC by submitting the application in a prescribed form. On receipt of

the said application, the authority concerned caused spot verification and demarcation of the said house site by sending one surveyor namely, Mr. Rosangmawia. And on receipt of the verification and demarcation report, the authority concerned was about to issued in plaintiff's favour. However, before the LSC was issued, the defendant No.6 had submitted a complaint to the authority concerned claiming that the plot of land covered by House Pass No.580/2000 was already issued to him way back in the year 1965 by the District Council vide Shop Pass No.47/65. After examination of the conflicting claims the defendants No.1-5 have decided that since the defendant no.6 was already issued Shop Pass No.47/65 in the year 1965, the House Pass No.580/2000 issued in the plaintiff's name is to be cancelled and accordingly, vide order Memo No.R.21011/79-92-DC (A)216 Dt.14/11/2000 the plaintiff was directed to dismantle his house building within a period of 30 days or to make private arrangement with the defendant No.6. However, no arrangement or settlement could be made between the plaintiff and the defendant no.6. Thereafter, the defendant No.5 had issued order memo No.R.21011/79-92-DC(A)225 Dt.25/1/2001 by which the plaintiff was directed to demolish his said house building within a period of 20 days from the date of the order and a copy of the order was served upon him some time on 30/1/2001. The impugned order dt.14/11/2000 and 25/1/2001 issued by the defendants are both illegal because no proper verification was done by the defendants before coming to the decision that the area covered by House Pass No.580/2000 overlaps the area covered by Shop Pass No.47/65. In fact the boundary description of the Shop Pass No.47/65 is very vague and its exact location cannot be ascertained after so many years. Further it is an undisputed fact that the defendant no.6 has not looked after his alleged site under Shop Pass No.47/65 all these years and now just because the plaintiff have been allotted a house site at Thuampui, the defendant No.6 with an eye to grabbing the said land has made his false and baseless claim. Even assuming but not admitting that the Shop Pass No.47/65 was allotted to the defenadant no.6 but it appears that the said Shop Pass was not given in accordance with law because there are no terms and conditions given in it. Further, it is not clear under what law the said Shop Pass was allotted to the defendant no.6 and therefore as it has no foundation the said Shop Pass No.47/65 is liable to be declared as null and void and the same cannot be used for depriving the plaintiff of his legal right over the suit land which has been legally allotted to him. Moreover, the defendant no.6 failed to pay the Shop tax regularly to defendant no.1-5 and he cannot be allowed to take advantage of his wrong at this late stage by paying up all his dues at one time and then claiming that the land allotted to the plaintiff belongs to him. In fact, the written statement submitted by the defendant no.1-5 shows that the defendant no.6 had paid his tax for the period from 1968 to 1971 on 18/1/72 for the period 1972 to 2002 On 7/8/2000 and for the period 2000-2001 on 13/3/01. The fact that the defendant no.6 had paid tax for the period from 1972 to 2000 On 7/8/2000 which was also the date on which the Government by order no.K.52012/88/96/REV/Vol- I dt.7/8/2000 had given approval for allotment of land for house site to the plaintiff clearly shows that the defendant no.6 had paid the arrear of taxes in one installment malafide to try and strengthen his claim. As the defendant no.6 had not paid his Shop tax regularly and as he had not used his shop pass

for the purpose it was allotted to him for all these years, he is estopped from claiming the disputed plot of land at this belated stage. The verification report dt.26/9/2000 submitted by Lalthuamluaia Surveyor-III stating that the plaintiff's pass area has overlapped the pass area of the defendant no.6 is not reliable because it is very vague in particular and it does not describe properly as to how the plaintiff's pass area had overlapped the pass area of the defendant no.6. In fact, as the Shop Pass No.47/65 has no proper boundary description there is no way of identifying its location and it cannot be held that the shop pass area has been overlapped by the plaintiff's pass area. The plaintiff therefore prays a relief that (i) For a decree in plaintiff's favour and against the defendants. (ii) For a declaration that the House Pass No.580/2000 in the plaintiff's name is legal and valid and the same has been issued in according with the procedure established by law while the shop pass no.47/65 alleged to have been issued in the name of the defendant no. 6 is illegal and void. (iii) For declaring that the order No.R.21011/79-92-DC(A)216 Dt.14/11/2000 and No.R.21011/79-92-DC(A)225 Dt.25/1/2001 are not valid and without authority, or (iv) For payment of compensation to the tune of Rs.5 lakhs by the defendants to the plaintiff with the pendente lite interest @ 12% p.a. (v) For cost of the suit and any other relief(s) as this Court deem fit and proper.

The defendants 1-5 in their joint written statements stated by denying the contents of the paragraphs 11 and 12 that prior to issue order dated 24.11.2000 and 25.1.2001, proper verification was conducted by Lalthuamluaia Surveyor - III vide Office order dated 5.11.2000 and verification report was submitted to the concerned authority accordingly. Hence, it has been ascertained that the Shop Pass No.47 of 1965 was issued in favour of the Defendant no.6 by Revenue Officer of the erstwhile District Council on 9.11.1965 in accordance with the Mizo District (Land and Revenue) Act 1956 with proper boundary description and terms and conditions. The defendant no.6 paid all tax upto 2000-2001. To be more exact, the defendant no.6 paid house tax for the period 1969-71 on 18.1.1972, 1972 - '00 on 7.8.2000 and 2000-'01 on 13.3.2001. There is absolutely no cause of action. The plaintiff had willingly offered to sell his temporary house/stall at Rs.40,000/- to the defendant no.6 in attempting to abide by the relevant order issued on 14.2.2000. Surprisingly enough, the plaintiff has now chosen to state his claim for compensation amounting to Rs.5 lakhs which is incredibly unbelievable and extremely absurd. The plaintiff has no legal right and lawful right to claim the relief prayed for and prayed the court to dismiss the suit with cost.

The Defendant no.6 submitted his written statement and stated that the defendant no. 6 have no other plot of land except the one covered under Shop Pass No.47 of 1965 within Aizawl District. He was at lunglei due to his service and he came to Aizawl in the year 2000 thereby started staying in a rented house at Chaltlang and now the defendant is staying at Chanmari West. The defendant knew that the plaintiff had applied for the said land in the year 1988. He applied for the suit land knowing fully well that the suit land was the answering defendant's property. First of all, when the suit land was issued in favour of the plaintiff, the land in question was not a vacant land and the same was allotted to the defendant by way of Shop Pass No. 47

of 1965 by the erstwhile Mizo District Council way back in the year 1965. The defendant's father Mr. Lalsangliana was serving as interpreter of 17BRTF and he died on 20 May, 1965. After the death of the defendant's father, the said plot of land covering an area of 8000 Sq.ft was allotted to the plaintiff by the erstwhile Mizo District Council vide Shop Pass No. 47 of 1965. When the said Pass was issued the said land was located within the Zemabawk Village Council. As far as the defendant knows, the Thuampui Village Council came into existence much after the said land was allotted to the defendant by erstwhile Mizo District Council. The erstwhile Mizo District Council was competent to allot lands to individuals. In the year 1966 the answering defendant's family members constructed a building within the said land, before the building was completed, it was destroyed by the security force personnel who came to assist the District Administration in suppressing the insurgency/disturbance which broke out in the year 1966. In fact that the VCP Zemabawk Village Council was aware of the fact that the suit land was first allotted in the name of the answering defendant. It is also a fact that the said land was not a vacant land at the time the plaintiff applied for the same. The certificate issued by the Secretary, VC of Thuampui to the effect that the said plot of land was vacant is false and the said VC has not issued the certificate on the basis of the records but at the instance of the plaintiff. When the Thuampui Veng Village Council was formed by carving out from the Zemabawk Village Council, the records relating to the land should have been handed over to the Thuampui Village Council by the Zemabawk Village Council. It is clear that the Secretary of the Thuampui Village Council had not verified the documents maintained by the Zemabawk Village Council in respect of the suit land before certifying that that the plot of land applied by the plaintiff was vacant land. In fact a copy of the Shop Pass No.47 of 1965 was given to the VCP, Zemabawk by the then Revenue Officer, Mizo District Council vide Memo.EP.2/R/65/3991-4 dt.9/11/1965. Hence, it is clear that the Secretary VC, Thuampui had certified without verifying the documents and without any authority. Hence, the Pass issued in favor of the plaintiff on the basis of the false certificate is invalid. Regarding the alleged query made by the plaintiff as to whether the said land has been included within the acquired area of the BRTF, the query should have been made with the President of the Zemabawk Village Council. The answering defendant also knew that the House Pass was issued in favour of the plaintiff by the Revenue Department due to the false certificate given by the Secretary Thuampui. Without knowing that the Revenue Department was processing pass in favor of the plaintiff, the answering defendant had cleared the land and also put his name and Pass No. in conspicuous place in the suit land, but the plaintiff had removed the said name plate and constructed a temporary 'Sethlam'(small and simple Assam Type building) in a hurry to have a false claim to answering defendant's land. The answering defendant is the rightful owner of the suit land and before the House Pass was issued, the plaintiff knew that the suit land was the property of the answering defendant. In fact, the plaintiff after knowing that the suit land belongs to the answering defendant and tried to misguide the Revenue Department and clandestinely obtained the House Pass. As soon as the answering defendant came to know that the plaintiff has removed the name plate put up in the suit land and he started construction of building within the suit

land, submitted a complaint. After verifying the claim of the plaintiff and the claim of the answering defendant, the Revenue Department came to the conclusion that the House Pass issued in favor of the plaintiff was by mistake and they had cancelled the said House Pass issued in favor of the plaintiff and the Revenue Department rightly ordered the plaintiff to dismantle the building. On 15/9/2000, the Surveyor namely Mr. Lalthuamluaia Sailo, Surveyor-II was detailed by the Revenue authorities to conduct spot verification. He conducted spot verification in the presence of the plaintiff, answering defendant and the VC Member of Thuampui. He submitted a verification report. The answering defendant's relatives had constructed a building way back in the year 1966 and before completion the said building was destroyed by the Army Personnel. As the answering defendant was in Lunglei during the relevant period, he could not do anything within the suit land. As soon as he came to Aizawl from Lunglei in the year 2000 he cleared the land and put the notice showing that the land belongs to him and he cleared the land with the intention to construct a building in order to stay, but before he could construct, the plaintiff had made 'Sethlam' within the suit land knowing fully well that the suit land was the property of the answering defendant. The intention of the plaintiff was mala fide and made 'Sethlam' in order to have a false claim to the land of the answering defendant and the revenue Department rightly cancelled the Pass of the plaintiff and rightly ordered the plaintiff to remove the building which he had illegally constructed within land of the answering defendant. The answering defendant has been paying the tax and he had cleared all taxes in respect of the land covered under Shop Pass No.47 of 1965. In fact the Revenue Department had settled the dispute according to the laws and the Revenue authorities which issued Pass, has right to cancel if it is ascertained that they have committed mistake. The suit valuation made by the plaintiff in the plaint in order to have illegal gain had made the valuation very high and the said valuation is baseless. In the order dt.14/11/2000, the Revenue authorities have informed the plaintiff to look for another vacant land for transfer of the House Pass No. 580 of 2000. The plaintiff cannot have any cause of action to sue the answering defendant and the answering defendant is entitled to the vacant possession. The order of the Revenue Department is correct and has to be upheld. The answering defendant therefore prays to dismiss the suit with cost.

On the basis of the pleadings of the parties the following issues were framed on 11.6.2002 namely-

1. Whether the suit is maintainable in its present form and style.
2. Whether there is any cause of action in favour of the plaintiff against the defendants for filing the suit.
3. Whether the suit is barred by limitation or doctrine of estoppel and acquiescence.
4. Whether the suit is bad for non-joinder/mis-joinder of parties.
5. Whether the house site under House Pass No.580/00 allotted in favour of the plaintiff is legal and valid or not.
6. Whether the area covered by the Shop Pass No.47/65 in the name of the defendant No.6 is overlapped or encroached upon by House Pass No.580/00 issued to the plaintiff, if so, whether there was any

lapse on the part of the defendant No.6 is not constructing a shop building since the year of its allotment till date.

7. Whether the order dt.14/11/00 and 25/1/01 are legal and valid or not.
8. Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiffs had produced the following witnesses namely-

1. Mr. L.T. Kima Fanai S/o Piandenga, Electric Veng, Aizawl (Hereinafter referred to as PW-1)
2. Mr. Thanzuala S/o Lalpuithanga, Zemabawk, Aizawl (Hereinafter referred to as PW-2)

The **PW-1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint being the plaintiff. he further deposed that-

Ext. P- 1 is a copy of No Objection Certificate issued by Mr. R. Thangmawia (But objected by counsel for the defendant no. 6 as no original copy)

Ext. P-2 is a copy of Certificate Dt. 28/6/1999 issued by Mr. Vanramngena, Secretary, Village Council, Thuampui (But objected by counsel for the defendant no. 6 as no original copy)

Ext. P-3 is a copy of letter Dt. 3/1/00 sent by Mr. H. Lalengmawia, Under Secretary to the GOM, Revenue to Director, LR&S Department (But objected by counsel for the defendant no. 6 as no original copy)

Ext. P-4 is a copy of letter Dt. 14/8/00 sent to ASO-I, LR&S by Mr. Lalmachhuana, ASO-II (But objected by counsel for the defendant no. 6 as no legality)

Ext. P-5 is a copy of House Pass No. 580 of 2000 issued in the name of the plaintiff (But objected by counsel for the defendant no. 6 as no legality)

Ext. P-6 is a copy of application for house site dt. 1/9/2000 submitted by the plaintiff (But objected by counsel for the defendant no. 6 as no legality)

Ext. P-7 is a copy of order dt. 4/8/2000 issued by Mr. V. Lianzinga, Asst. Director of Survey

Ext. P-8 is a copy of order dt. 14/11/2000 issued by Mr. L. Malsawma, ASO-II, Aizawl

Ext. P-9 is a copy of order dt. 25/01/2001 issued by Mr. L. Malsawma, ASO-II, Aizawl

In his cross examination by learned AGA for state defendants, he deposed that he is a permanent resident of Electric Veng, Aizawl and he never dwelled at Thuampui, Aizawl. After House Pass was issued over to the suit land in his favour in 2000, he had constructed an Assam Type building in the suit land. When he took steps for conversion of his House Pass into LSC, he came to know the Shop Pass of the defendant no. 6 in the suit land.

Although he offered to the defendant no. 6 for purchasing his Assam Type building in the suit land @ Rs. 30,000/-, the defendant no. 6 refused to do so. He admitted that his House Pass was junior than the pass of the defendant no. 6.

In his cross examination by learned counsel for the defendant no. 6, he deposed that he is running Runmawi Tyre Works and the member of Village Council, Electric Veng, Aizawl. He was informed by his friend Mr. Simon Chawngchhuana stating that the disputed land was vacant. At the time of spot verification conducted by Mr. Rosangmawia, Surveyor, he himself, the defendant no. 6 and the member of Village Council were present on the spot. He admitted that before issuing cancellation order of his pass, the Revenue authorities issued show cause notice to him.

The **PW-2** in his examination in chief deposed that he was born and brought up at Zemabawk and continued to remain at Zemabawk locality. He knew Kelpu veng which is now known as Thuampui veng which was used to be under the jurisdiction of Durtlang village council during the regime of Mizo District Council and it was again under the jurisdiction of Zemabawk during Union Territory status of Mizoram. Lastly separated Thuampui when the Mizoram attained statehood, the first election of village council of Thuampui was held in 1988. He witnessed that at the time of issuance of the House Pass of the plaintiff, the suit land was vacant.

In his cross examination, he deposed that he came to know the plaintiff since 2004 as the son of his sister namely Mr. Simon Chawngchhuana has been working in the shop of the plaintiff. He is working as carpenter and Mistiri in stone work. He was never a part of any village council as a member. As there was no building in the suit land, he presumed that it was a vacant land. He did not know that the Revenue authority had cancelled the pass of the plaintiff.

For the defendants nos. 1-5:

The defendants nos. 1-5 had produced only one witness namely- Mr. K. Lalhmuakliana, Asst. Director, Land Revenue and Settlement Department (Hereinafter referred to as DW- for defts 1-5). In his examination in chief he deposed that Ext. D-1 is written statement, Ext. D-1 (a) is the signature of the then Under Secretary to the Govt. of Mizoram, Revenue Department. Ext. D-2 is spot verification report of Mr. Lalthuamluaia Sailo, Surveyor. Ext. D- 3 is the receipt of revenue paid by the defendant no. 6. The House Pass No. 580 of 2000 was issued to the plaintiff in 2000. The shop Pass No. 47 of 1965 was issued to the defendant no. 6 in 1965. As the pass of the defendant no. 6 was senior than the pass of the plaintiff, the pass of the plaintiff was cancelled. Although the plaintiff was directed to seek alternate land for settlement to settle the dispute, he instead filed the instant suit.

In his cross examination, he denied that the house pass of the plaintiff and the shop pass of the defendant no. 6 are not overlapped each

other. He denied that no proper verification was made over to the disputed land.

For the defendant no. 6:

The defendant no. 6 had produced the following witnesses namely-

1. Mr. Lalbiakthanga S/o Lalsangliana (L), Chaltlang Venglai- Aizawl (Herein after referred to as DW-1 for deft no. 6)
2. Mr. C. Laltanpuia S/o C. Lalthanga (L), Thuampui- Aizawl (Herein after referred to as DW-2 for deft no. 6)
3. Mr. Lalhmachhuana S/o Thalruma (L), Zemabawk, Aizawl (Herein after referred to as DW-3 for deft no. 6)

The **DW-1 for defendant no. 6** in his examination in chief deposed that he is the defendant no. 6 in the instant case. Being the defendant no. 6, he affirmed the contents of his written statement. He further deposed that-

Ext. D-1 is a copy of Shop Pass No. 47 of 1965

Ext. D-2 is a copy of Acknowledgement Dt. 22.9.2000 issued by the President, Village Council, Zemabawk

Ext. D- 3 is a copy of Tax receipt Dt. 7.8.2000

Ext. D- 4 is a copy of Tax receipt Dt. 13.3.2000

In his cross examination, he deposed that he is staying at Chanmari West with his family. He is Junior Engineer (Mechanical Circle), PWD by a profession. Shop Pass No. 47 of 1965 was initially issued to his father in 1954 but as young age, he did not know the exact circumstances including the terms and conditions. When the said shop pass was issued in his name, he admitted that there is no clear demarcation of the area. He denied that he fails to pay up to date tax for his shop pass to the Revenue Department. Without consulting him, the house pass of the plaintiff was issued by the Revenue Department.

In his re-examination, he deposed that as per the Revenue Order dt. 14.11.2000, the land of the plaintiff and his land over to the disputed area were overlapped.

The **DW-2 for defendant no. 6** in his examination in chief deposed that he is the elected member of village council, Thuampui for four times from 1990 and also a member during 2006 to 2009. He knew that the then Mizo District Council issued/allotted a plot of land to the defendant no. 6. During cadastral survey, he was also present on the spot and found that the suit land was disputed land. So far as his knowledge concerned, there was no vacant land in the suit land for issuance of the pass of the plaintiff. The Secretary of Village Council merely issued no-objection certificate for issuance of the pass of the plaintiff without the sitting of village council.

At the time of issuance of the pass of the plaintiff, I was also the member of village council, Thuampui. Although he admitted that there was

no clear demarcation of boundary in the shop pass of the defendant no. 6, there can be confusion on the said area and location.

The **DW-3 for defendant no. 6** in his examination in chief deposed that he is an elected member of village council, Zemabawk in 1964 and also the President of Village Council in 1987 when Thuampui village council was emerged from Zemabawk village council. In his knowledge, being interpreter, the BRTF gave a plot of land to the father of the defendant no. 6 namely Mr. Lalsangliana. But due to insurgency, he could not occupy his land. After that a separate pass was issued in the name of the defendant no. 6.

In his cross examination, he deposed that even after ceasing of insurgency, they do not know that whether the defendant no. 6 developed the suit land or not. He did not know that whether the defendant no. 6 had obtained pass from the government or not and thereby did not know the area of the said land.

ARGUMENTS

After appreciation and elucidation of evidences adduced therein and meticulously examining the pleadings, learned senior counsel for the plaintiff's Mr. C. Lalramzauva submitted that the land allotted to the plaintiff overlap or encroach upon the land of late Lalsangliana father of the defendant no. 6, as the plaintiff based on the land allotted by BRTF, there can be no question of merit of the case in favour of the defendant no. 6.

On the other hand, Mr. W. Sam Joseph, learned counsel for the defendant no. 6 contended that according to him the main issue is when the Pass was obtained by the plaintiff whether the land was vacant. The Government of Mizoram can allot only vacant land to the individuals. The plaintiff has mentioned that the said pass was issued in his favour as per the provisions of the Land and Revenue Act. As per the provisions of S.5 of the Mizo District (Land and Revenue) Act, pass holder's rights has been defined. But the said provision has not given any right to the Revenue department for issuing the pass. The form used for issuing the House Pass in favour of the plaintiff is also not provided either in the Mizo District (Land and Revenue) Act or Rules. In S.5 of the said Act the word "Pass holder" is defined as "*A Pass holder shall have no right in the soil beyond a right of user for the period for which it is given and shall have no right of transfer, or of inheritance beyond the period of the pass or subletting.*" As per the terms and conditions under which the pass was issued by mistake over the land of the defendant no.6 in favour of the plaintiff was only for two years. At present the said pass is not valid. Whereas the Pass issued in favour of the defendant no.6 is permanent one. In fact the said Pass was issued on with the approval of the Executive Committee of the Erstwhile Mizo District Council. The Government can allot only the 'vacant land'. The word 'vacant land' is defined in the Mizo District (Land and Revenue) Rules at Rule 2 (3) and it runs thus: "Vacant Land" means any land which has not been allotted to any one whether occupied or unoccupied and over which no body has acquired any right under the Act, and shall not include any land within the State Reserved Forests, if any, and all lands actually covered by

Government and public roads.” When the plaintiff obtained the pass for the land, the land was not vacant; hence the defendant nos. 1 -5 had rightly cancelled. In fact he is not entitled to any compensation. However, the Government agreed to give an alternate land for the plaintiff. In this connection, he emphasized that the plaintiff during cross examination by the counsel for the defendant nos. 1 - 5 stated that *“I came to learnt that the defendant no.6 has a Shop Pass No.47/65 in respect of the suit land when I made an attempt to convert my said House Pass into LSC as the defendant no.6 submitted written objection. It is fact that I had earlier offered to sell my said Assam Type building to the defendant no.6 for about Rs.30,000/-. However, the defendant no.6 refused to purchase the same for one reason or another. It is a fact that my said Pass was much junior to the Pass held by the defendant no.6. It is a fact that I had earlier agreed to settle the matter for about Rs.30,000/-.”* The plaintiff stated in his cross examination by the counsel for the defendant no.6 that *“I was informed by one of my friends namely Simon Chawngchhuana that the disputed land was vacant.”* But the said person was not examined as witness. Instead the plaintiff examined his father Pu Lalthanzuala and he stated that *“I did not indicate the land allotted to Plaintiff but what I came to know from the plaintiff was that the said plot of land was said to be vacant by the VCP.”* Thus, from the evidence on record it is clear that the plaintiff applied for the land knowing very well that the plot of land was not vacant and the said land belongs to the defendant no.6. Therefore, he prayed to dismiss the suit with cost.

FINDINGS

Issue No. 1

Whether the suit is maintainable or not

Prayer to waiving of the legal notice as mandate u/s 80 of CPC became exonerated as per this court order Dt. 15/2/2001. Meanwhile, the plaintiff paid Rs. 1000/- of court fees at the time of filing of the suit by pledging that such deficiency will be make up as and when the court fees are available with the vendor. But till date, no make up of such deficiency as pledged is found whilst the suit was valued at Rs. 5 lakhs under paragraph no. 16 in the plaint. The plaint was supported by verification but not supported by affidavit. In this lacunae, the provisions of sub- rule (4) of rule 15 under Order VI of the CPC was made effective after institution of the instant suit viz. with effect from 1-7-2002 by Act No. 46 of 1999. No doubt deficiency of court fees is not tenable in law and will not be maintainable.

Issue No. 2

Whether there is any cause of action in favour of the plaintiff against the defendants for filing the suit.

The plaintiff being the PW-1 in his examination deposed that *“When he took steps for conversation of his House Pass into LSC, he came to know the Shop Pass of the defendant no. 6 in the suit land. Although he offered to the defendant no. 6 for purchasing his Assam Type building in the suit land @ Rs. 30,000/-, the defendant no. 6 refused to do so. He admitted that his*

House Pass was junior than the pass of the defendant no. 6.” It denotes that his suit land is similar with the land covered by the shop pass of the defendant no. 6. However, the prayer of the plaintiff in his plaint under nos 2 and 3 reads thus - (ii) For a declaration that the House Pass No.580/2000 in the plaintiff's name is legal and valid and the same has been issued in according with the procedure established by law while the shop pass no.47/65 alleged to have been issued in the name of the defendant no. 6 is illegal and void. (iii) For declaring that the order No.R.21011/79-92-DC(A)216 Dt.14/11/2000 and No.R.21011/79-92-DC(A)225 Dt.25/1/2001 are not valid and without authority, or (iv) For payment of compensation to the tune of Rs.5 lakhs by the defendants to the plaintiff with the pendente lite interest @ 12% p.a. Cause of action is therefore found in the light of the ratio laid down 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 as the plaintiff is the holder of the House Pass No. 580 of 2000.

Issue No. 3

Whether the suit is barred by limitation or doctrine of estoppel and acquiescence.

As per paragraph no. 14 of the plaint, the cause of action had arisen on 14/11/2000 and 25/1/2001 when the defendants 1-5 had issued the impugned orders directing the plaintiff to dismantle his house building within the suit land. If it be so, cogently, the suit being filed on 15/2/2001 is not barred by law of limitation. No points on estoppel and acquiescence is found and heard during the course of trial. This issue is therefore again decided in favour of the plaintiff.

Issue No. 4

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

Before looking to the case at hand, the well settled law is epitomized in **Iswar Bhai C. Patel & Bachu Bhai Patel Vs. Harihar Behera & Anr.** decided on 16/03/1999 reported in 1999 AIR 1341, 1999 (1) SCR 1097, 1999 (3) SCC 457, 1999 (2) SCALE 108, 1999 (2) JT 250, it was held that-

“These two provisions, namely, Order 1 Rule 3 and Order 2 Rule 3 if read together indicate that the question of joinder of parties also involves the joinder of causes of action. The simple principle is that a person is made a party in a suit because there is a cause of action against him and when causes of action are joined, the parties are also joined.”

And 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 observed thus-

“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.”

Meanwhile, like in the instant case, where the State of Mizoram is also impleaded as defendant, the observations of Hon’ble Gauhati High Court in the case of **Commissioner -cum-Secretary & Ors vs. T.C. Syndicate & Ors** reported in 2011 (2) GLT 12 is fulfilled. I therefore find no irregularities which can vitiate the proceedings due to non-joinder of necessary parties..

Issue No. 5

Whether the house site under House Pass No. 580/2000 allotted in favour of the plaintiff is legal and valid or not.

As depicted by Ext. P- 4 viz. conveyance of Govt. approval for issuance of House Pass No. 580/2000 allotted in favour of the plaintiff adduced by Ext. P-5 viz. copy of House Pass No. 580/2000 allotted in favour of the plaintiff. it was issued in accordance with Section 5 of the Mizo District (Land and Revenue) Act, 1956, no laches which can non-est of House Pass No. 580/2000 allotted in favour of the plaintiff is found.

Issue No. 6

Whether the area covered by the Shop Pass No.47/65 in the name of the defendant No.6 is overlapped or encroached upon by House Pass No.580/00 issued to the plaintiff, if so, whether there was any lapse on the part of the defendant No.6 in not constructing a shop building since the year of its allotment till date.

Evidence clearly elicited that the area covered by the Shop Pass No.47/65 in the name of the defendant No.6 is overlapped or encroached upon by House Pass No.580/00 issued to the plaintiff. For that purpose, the plaintiff being acted as the PW-1 also admitted that *“When he took steps for conversation of his House Pass into LSC, he came to know the Shop Pass of the defendant no. 6 in the suit land. Although he offered to the defendant no. 6 for purchasing his Assam Type building in the suit land @Rs. 30,000/-, the defendant no. 6 refused to do so. He admitted that his House Pass was junior than the pass of the defendant no. 6.”* Evidence of the plaintiff itself also clearly revealed that only because of the observations of one namely Mr. Simon Chawngchhuana, the plaintiff presumed his suit land as vacant land and thereby applied to the Revenue authorities for allotment and accordingly issued his House Pass No. 580 of 2000.

In respect of Shop Pass No. 47 of 1965 issued in the name of the defendant no. 6, the area was specifically mentioned as frontage, depth and

base. It was issued by the then Revenue Officer, Mizo District Council under Memo No. E.P. 2/R/65/3991-4 Dated Aijal, the 9th November, 1965. No terms and conditions for construction of building or shop building in the said elaka is imposed on the facet of Ext. D-1 which accompanied the written statement of defendant no. 6. In a nutshell, I see no fault on the part of defendant no. 6 by not constructing shop building in his suit land till date.

Issue No. 7

Whether the order dt.14/11/00 and 25/1/01 are legal and valid or not.

In the impugned order Dt. 14/11/2000 marked as Ext. P- 8 which was issued by the Assistant Settlement Officer- II, Aizawl, the reasons was clearly mentioned that show cause notice replied letter of the plaintiff being the holder of House Pass No. 580 of 2000 was also received by them. On checking their records, the defendant no. 6 also paid/cleared all necessary revenue taxes. As surveyed, it was found that the area covered by House Pass No. 580 of 2000 and Shop Pass No. 47 of 1965 were in the similar area. Being a senior one, they upheld Shop Pass No. 47 of 1965. Thus, the temporary building of the plaintiff was directed to dismantle by the plaintiff himself. The plaintiff is further instructed to seek another vacant land to transfer his House Pass. For that process, the plaintiff being acted as PW-1 also admitted that *"At the time of spot verification conducted by Mr. Rosangmawia, Surveyor, he himself, the defendant no. 6 and the member of Village Council were present on the spot. He admitted that before issuing cancellation order of his pass, the Revenue authorities issued show cause notice to him"*. I therefore find no illegality on the said impugned order as it is a reasoned order as recently observed by the Hon'ble Supreme Court in **Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors.** decided on 2 March, 2012 in connection with Civil Appeal No. 2085 of 2012 and in **Justice P.D. Dinakaran Vs. Hon'ble Judges Inquiry Committee and others** in connection with Writ Petition (Civil) No. 217 of 2011 decided on 05-07-2011.

In the other impugned order dt. 25-01-2001, due failure to comply with the order dt. 14/11/2000 marked as Ext. P- 8, the plaintiff was again directed to dismantle his temporary building in the disputed land within twenty days from the date of such issuance.

The law is well settled in **Manish Goel Vs. Rohini Goel**, reported in AIR 2010 SC 1099, the Supreme Court after placing reliance on large number of its earlier judgments held as under :-

"No Court has competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been enjoined by law."

In the case of **State Of West Bengal vs Subhas Kumar Chatterjee & Ors.** decided on 17 August, 2010 in connection with Civil Appeal No. 5538 of 2008, the Supreme Court has observed that-

“No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.”

In the case of **Central Board of Secondary Education Vs. Nikhil Gulati & Anr.** decided on 13/02/1998 and reported in 1998 AIR 1205, 1998 (1) SCR 897, 1998 (3) SCC 5, 1998 (1) SCALE 634, 1998 (1) JT 718, it was observed thus-

“Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on *principle and precept*, it should better desist from passing such orders, for it puts the ‘Rule of Law’ to a mockery, and promotes rather the ‘Rule of Man’.”

No evidence in the instant case and submissions in pleadings, revealed that the impugned orders violated existing land laws leading arbitrariness and capriciousness. Interference of this court is not therefor called for.

Issue No. 8

Whether the plaintiff is entitled to the reliefs claimed or not.

Whilst the impugned order Dt. 14/11/2000 marked as Ext. P- 8 rather beneficial for the plaintiff. Wherein, the plaintiff is further instructed to seek another vacant land to transfer his House Pass. Undisputedly, on his voluntary application, house pass was issued to the plaintiff. If some encroachment is found at a later stage, what remedy will be lied for monetary compensation. The impugned order is rather praiseworthy for the plaintiff for seeking another vacant land in lieu of his capricious allotment on his fault. In short, on bare reading of the above various findings, I find no entitlement of the plaintiff as prayed in his plaint. It is relevant to note the observations 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 crux in the instant case is answered by the above ratio laid down by Hon’ble Apex Court where judicial interference is not demand.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, due to lack of merits, it is hereby ORDERED that the suit is dismissed but no order as to costs.

With this order, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 9th April, 2012 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. CS/1/2001, Sr. CJ (A)/

Dated Aizawl, the 9th April, 2012

Copy to:

1. Mr. L.T. Kima Fanai S/o L. Piandenga R/o Electric Veng, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue & Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. The Deputy Commissioner, i/c Revenue, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
6. The Assistant Settlement Officer -II, Land & Revenue Settlement Department, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
7. Mr. Lalbiakthanga S/o Lalsangliana(L) 'Thlihiau Run', Chaltlang Venglai, Aizawl through Mr. W. Sam Joseph, Adv.
8. P.A to Hon’ble District Judge, Aizawl Judicial District- Aizawl
9. Case record

PESKAR