

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

EVICTION SUIT NO. 01 OF 2011

Plaintiff:

Smt. Lianhmingthangi
D/o Hrangia (L)
Hrangia Building
Chanmari, Aizawl

By Advocates

: 1. Mr. M. Zothankhuma, Sr. Adv
2. Mr. R. Laltanpuia
3. Mr. Lalfakawma
4. Miss Zonuni Hrahse
5. Miss Dorothy Lalrinchhane

Versus

Defendants:

1. Thuampui Veng Branch YMA
Represented by
Mr. K. Lalrimawia
YMA President
Thuampui Veng Branch, Aizawl
2. The State of Mizoram
Represented by Secretary to the Govt. of Mizoram
Revenue Department
3. The Director
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocates:

For the defendants No. 1	: 1. Mr. B. Lalramenga 2. Mr. J.C. Lahnunsanga
For the defendants No. 2 and 3	: 1. Mr. R. Lalremruata, AGA 2. Miss Bobita Lalhmingmawii, AGA

Date of Arguments	: 16-08-2011
Date of Judgment & Order	: 21-08-2012

BEFORE

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

JUDGMENT & ORDER

INTRODUCTORY

A country without governance in accordance with law is akin to macabre life inimical to survival of human beings and their ecology. Particularly in land is older than human beings as Almighty creates ab initio and which is the main source of livelihood both for generation of economy and survival as creatures. The Young Mizo Association (In short-YMA) is commonly known as a community based organization very influenced in the governance and sometimes inflicted ultra vires even for committing discrimination to other race and caste. The instant case is also one cogent example when and where the YMA intrude in the private life of citizen without any lawful grounds by contumaciously remain intended to deprive the easement rights and human rights of the plaintiff as right to property is a matter of human rights as held in **Narmada Bachao Andolan vs State Of M.P. & Anr.** decided on 11 May, 2011 in connection with Civil Appeal No. 2082 of 2011, the Supreme Court has held that-

“26. This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide: Lachhman Dass v. Jagat Ram & Ors., (2007) 10 SCC 448; and Amarjit Singh & Ors. v. State of Punjab & Ors. (2010) 10 SC 43).”

Indian democratic polity is cogently and mainly depends on rule of law even in the field of land and property administration which is a must to uphold in any cases.

NUCLEUS OF THE CASE

The plaintiff by possessing a plot of land under LSC No. 103201/01/91 of 1999 located at Thuampui, Aizawl filed the case that the suit land was previously occupied by the Armed forces/BRTF and they constructed a shed in some portion of the land of the plaintiff and some portion of the shed lies in the roadside reserved land. The said BRTF vacated the suit land sometime in 2007. The defendant no. 1 continued to occupy the said shed by handling in their own hand. Although the defendant no. 2 ordered the defendant no. 1 to vacate and dismantle the same on 25/9/2008 and 09/08/2010, it became vain may be because of that the YMA is the powerful non governmental organization which may afraid by the Department. The plaintiff therefore prayed that (i) a decree directing the defendant no. 1 to vacate immediately and leave the plaintiff's land and shed standing within LSC No. 103201/01/91 of 1999 located at Thuampui, Aizawl (ii) a decree directing the defendant no. 2 to demolish the shed standing within LSC No. 103201/01/91 of 1999 located at Thuampui, Zemabawk, Aizawl (iii) cost of the suit and (iv) any other relief which the plaintiff is entitled according to justice, equity and good conscience.

The defendant no. 1 filed written statements stating that the suit is bad for non-joinder of necessary parties like the President of the Central Young Mizo Association, the plaintiff has no locus standi and no cause of action in the instant case. The suit land was given to the defendant no. 1 by the Village Council of Thuampui in 1988. The defendant no. 1 rather claimed in their counter claim to declare null and void of the orders passed by the Assistant Settlement Officer-I, Land Revenue and Settlement Department, Aizawl on 25/9/2008 and 09-08-2010 wherein, they were directed to vacate the suit land.

The defendants 2 and 3 in their joint written statement contended that upon verbal direction from the Director, Land Revenue and Settlement Department, the Settlement Officer, Aizawl had made physical verification on 14/1/2011 and thereby submitted a report thereof to the said Director on 8/2/2011, the Government of Mizoram therefore decided to take up actions for (i) demolish the building/shed occupied by the defendant no. 1 with the assistance of the Deputy Commissioner, Aizawl and under police protection (ii) disputed area be guaranteed as road reserved and no party should utilized the area for construction or for any other purpose (iii) compliance report should be submitted within 15 days from the date of receipt of the letter.

ISSUES

Issues were framed on 7/10/2011 and amended towards correct findings as below -

1. Whether the suit is bad for non-joinder of necessary parties by not impleaded the President of Central YMA as the defendant
2. Whether the area covered by a shed occupied by the defendant no. 1 is within the area of LSC No. 103201/01/91 of 1999 or whether it is within the road reserved area. If so, whether the plaintiff has locus standi to file the instant suit or not
3. Whether the plaintiff has any cause of action against the defendants or not
4. Whether the counter claim petition filed by defendant no. 1 is maintainable or not
5. Whether the defendant no. 1 had obtained a valid pass/permission from the concerned authority to construct/occupy the suit land or not
6. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.
7. Whether the defendant no. 1 is entitled to the relief prayed in their counter claim or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff herself alone acted as plaintiff witness (Hereinafter referred to as PW). In her examination in chief, she mainly affirmed the contents of the plaint. She further exhibits the following documents-

Ext. P-1 is a copy of LSC No. 103201/01/91 of 1999

Ext. P-2 is tax clearance certificate pertaining to LSC No. 103201/01/91 of 1999

Ext. P-3 is a copy of letter wrote by her to the defendant no. 1

Ext. P-4 is a copy of Detailment order Dt. 21/8/2008 for spot verification of the disputed area

Ext. P-5 is a copy of letter dt. 27/8/2008 issued by ASO-I, Aizawl for meeting with the defendant no. 1 and other concerned

Ext. P-6 is a copy of order dt. 25/9/2008 issued by ASO-I

Ext. P-7 is a copy of letter dt. 20/4/2009 issued by defendant no. 1

Ext. P-8 is a copy of order Dt. 27/10/2009 for detailment of spot verification of the disputed area

Ext. P-9 is a copy of order Dt. 9/8/2011 issued by Settlement Officer

In her cross examination, she deposed that she did not know whether the YMA is a registered society or not. She cannot exactly say the boundary of her land with neighbours. The disputed shed was standing before she purchased the suit land.

For the defendant no. 1:

The defendant no. 1 had produced the following witnesses namely-

1. Mr. K. Lalrinmawia, Ex. President, Thuampui Branch YMA, Thuampui- Aizawl (hereinafter referred to as DW-1)
2. Mr. Lalchangliana, President, Thuampui Branch YMA, Thuampui, Aizawl (hereinafter referred to as DW-2)

The **DW-1** in his examination in chief also mainly affirmed the contents of their written statements and plaint in counter claim petition. Ext. D- 1 is their written statement, Ext. D-1 (a) is his signature, Ext. D-1 (b) is also his signature.

In his cross examination, he deposed that in 1982, his family shifted to Thuampui, Aizawl. Thuampui locality was separated from Zemabawk in 1987. He cannot be able to trace out any documents purporting that the disputed land was given to defendant no. 1 in 1988 by the Thuampui Village Council. He was 11 years old in 1988. The suit land was not allotted to the Central YMA. He admitted as a fact that the disputed land was built by the BRTF prior to 1973. When the BRTF vacated the area, the defendant no. 1 occupied the disputed shed. He admitted as a fact that they did not have any documents of title in respect of the disputed land where the shed is standing upon. The Central YMA never told the defendant no. 1 to occupy the suit land.

The **DW-2** in his examination in chief stated that he hold the President of YMA, Thuampui Branch with effect from Feb., 2012. At the time of filing of the suit, he was the Vice President. He further mainly affirmed the contents of their written statement and plaint in their counter claim petition.

In his cross examination, he stated that in March, 2005, he shifted to Thuampui, Aizawl from Chaltlang Lily veng. Before he shifted to Thuampui, he knows nothing on the disputed land. He admitted that the Thuampui Branch YMA do not have any pass in respect of the shed and land which they are occupying. He also admitted that the defendant no. 1 have no any documents showing that the Thuampui Village Council had given the shed and disputed land to the defendant no. 1.

FINDINGS

Issue No. 1

Whether the suit is bad for non-joinder of necessary parties by not impleaded the President of Central YMA as the defendant

Laws on necessary parties is well settled 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 held that-

“The law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding. (See: Udit Narain Singh Malpaharia v. Additional Member, Board of Revenue, [1963] Supp. 1 SCR 676, at p. 681.”

The grounds of contention is that without impleadment of the President, Central Young Mizo Association, the suit will be futile and is bad for non-joinder of necessary parties as vehemently argued by learned counsel for the defendant no. 1 during oral and written arguments. Meanwhile, the defendant no. 1 failed to exhibit or produce any documents purporting that the Thuampui Branch YMA is a registered society under the Societies Registration Act as well as failure to produce or exhibit their bye laws indicating that all the cases against Young Mizo Association (In short YMA) should be filed in the name of the President of Central YMA.

However, as clearly admitted by DWs 1 and 2, the President of Central YMA neither instructed to occupy the suit shed nor unable to vacate the suit land without the permission of the said President of Central YMA. Deposition of DWs 1 and 2 clearly elicited that in their own will and hand in the disguise of the concerned Village Council permission to the defendant no. 1, they occupied the disputed shed. On examining facts and circumstances of the case in the light of **U.P. Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) By Lrs. & Ors.** (supra.) and in **S.P. Gupta Vs. President Of India And Ors.** decided on 30/12/1981 reported in AIR 1982 SC 149, (1981) Supp (1) SCC 87, (1982) 2 SCR 365 and 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, the interference of President of Central YMA in the instant case is immaterial till realization of the prayer of the plaintiff. This issue is therefore decided in favour of the plaintiff.

Issue No. 2

Whether the area covered by a shed occupied by the defendant no. 1 is within the area of LSC No. 103201/01/91 of 1999 or whether it is within the road reserved area. If so, whether the plaintiff has locus standi to file the instant suit or not

At the time of oral arguments, House site plan of the plaintiff under LSC No. 103201/01/91 of 1999 marked as Ext. P-1 is showed to learned counsels of both parties, the drawing itself indicates that morethan 80% of the occupied area of the disputed shed lies in the area covered by the said LSC No. 103201/01/91 of 1999. The rest lies to the roadside land in between the land of the plaintiff and the main road which is also admitted by learned counsel for the defendant no. 1.

Law on doctrine of locus standi is recently observed In **Ravi Yashwant Bhoir vs The Collector, District Raigad & Ors.** decided on 2 March, 2012 in connection with Civil Appeal No. 2085 of 2012, the Supreme Court has held that-

“....A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eyes of law because it may not result in injury to a legal right or legally protected interest of the complainant but juridically harm of this description is called *damnum sine injuria*....”

Pertinently, whether it is within the area covered by LSC No. 103201/01/91 of 1999 or not, as the disputed shed lies in between the land of the plaintiff and the main road, the easement rights of the plaintiff will be hampered without dismantling the disputed shed except with the permission of the plaintiff as it is no man's land as deposed and admitted by DWs 1 and 2 during their cross examinations. The plaintiff must therefore with locus standi to file the instant suit.

Issue No. 3

Whether the plaintiff has any cause of action against the defendants or not

Recently in **Church Of Christ Charitable Trust & Educational Charitable Society vs M/S. Ponniammam Educationa Trust** decided on 3 July, 2012 in connection with Civil Appeal No. 4841 of 2012 (Arising out of SLP (C) No.30632 of 2011), their Lordship of Hon'ble Supreme Court has set forth the ingredients of plaint towards cause of action in the following terms speaking that-

“8) While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.”

In the light of the above, the plaintiff is undisputedly the holder of LSC No. 103201/01/91 of 1999 and whilst some portion of the disputed shed lies the area covered by the said LSC No. 103201/01/91 of 1999 and the rest in between the land of the plaintiff and the main road. Admittedly, the defendant no. 1 occupied the disputed shed without any authority and the defendants 2 and 3 had taken an action as revealed by Ext. P-6 and Ext. P- 9 to vanish the disputed shed. Thus, the plaintiff certainly must have cause of action against the defendants.

Issue No. 4

Whether the counter claim petition filed by defendant no. 1 is maintainable or not

Undisputedly, by paying Rs. 30/- as court fees praying declaration as null and void of the impugned orders passed by the Assistant Settlement Officer-I, Aizawl, the counter claim petition will be maintainable.

Issue No. 5

Whether the defendant no. 1 had obtained a valid pass/permission from the concerned authority to construct/occupy the suit land or not

As fairly admitted by DWs 1 and 2 during their cross examination, the defendant no. 1 have no valid pass/permission from the concerned authority to construct/occupy the suit land and is no need of further elaboration.

Issue No. 6

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

Undisputed facts germinated from both oral and documentary evidence is that after the BRTF (Army who forcefully occupied the suit land during MNF insurgency in Mizoram since 1966) vacated the suit land including the disputed shed, may be because of biggest young community based organization in the society, the defendant no. 1 occupied the disputed shed by investing enjoyment in their own hand by themselves but is without any lawful authority. The plaintiff will cogently entitle to the relief sought in her plaint as it is a matter of human rights violation as held in **Narmada Bachao Andolan vs State Of M.P. & Anr.** (supra.) whilst the defendants 2 and 3 are solely established and constituted to protect the human rights of citizenry like the instant plaintiff.

Issue No. 7

Whether the defendant no. 1 is entitled to the relief prayed in their counter claim or not. If so, to what extend.

As per the findings under issue no. 5 and no basis of the claimed of the defendant no. 1, this issue cannot be held in favour of the defendant no. 1 as our today is under the glimpse of rule of law within the edifice of the holy Constitution of India.

The defendants 2 and 3 are therefore liable to direct to realize or execute their order under No. R. 21011/79/07- DC (A)/216-217 Dated Aizawl, the 9th August, 2010 marked as Ext. P-9 and their later letter under No. C. 18016/11/2009- REV Dated Aizawl, the 31st March, 2011 as it was passed with due process of law after giving opportunity of being heard to parties and accurate spot verification with technical expert hands was carried out as revealed by Ext. P-4, Ext. P-5, Ext. P-8 etc.

ORDER

Recently in **Maria Margadia Sequeria Fernandes and Others vs Erasmo Jack De Sequeria (D) through L.Rs.** decided on 21 March, 2012 in connection with Civil Appeal No. 2968 of 2012 (Arising out of SLP (C) No. 15382 of 2009), the Hon'ble Supreme Court has remain recognised that- "80. *It is a settled principle of law that no one can take law in his own hands....*" is attractive in the instant case where the defendant no. 1 themselves without any hesitation occupied the disputed shed although they admitted that they have no any rights emerged from the competent authority for the same. Also recently in **Girimallappa vs Spl.Laq Officer & Anr** decided on 16 July, 2012 in connection with (CC No. 11497 of 2012), the Supreme Court has held that-

"17. Justice is an illusion as the meaning and definition of 'justice' varies from person to person and party to party. Party feels having got justice only and only if it succeeds before the court, though it may not have a justifiable claim.

Justice is the virtue, by which the Society/Court/Tribunal gives to a man what is his due, opposed to injury or wrong. Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tempering the justice with mercy, the Court has to be very conscious that it has to do justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law. (Vide: Delhi Administration v. Gurudeep Singh Uban, AIR 2000 SC 3737)."

In view of the afore findings and elaborations, it is hereby ORDERED and DECREED that the defendants 2 and 3 are directed to realize or execute their order under No. R. 21011/79/07- DC (A)/216-217 Dated Aizawl, the 9th August, 2010 marked as Ext. P-9 and their later letter under

No. C. 18016/11/2009- REV Dated Aizawl, the 31st March, 2011 within one month from the date of this order. No order as to costs of the suit.

With this order, the case shall stand disposed of.

Give this order copy to all concerned.

Given under my hand and seal of this court on this 21st August, 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. ES/01/2011, Sr. CJ (A)/

Dated Aizawl, the 21st August, 2012

Copy to:

1. Smt. Lianhmingthangi D/o Hrangaiia (L), Hrangaiia Building, Chanmari, Aizawl through Mr. M. Zothankhuma, Sr. Adv.
2. Thuampui Veng Branch YMA represented by its President through Mr. B. Lalramenga, Adv.
3. The State of Mizoram Represented by the Secretary to the Govt. of Mizoram, Revenue Department through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue & Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District: Aizawl
6. Case record

PESKAR