

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

CIVIL SUIT NO. 16 OF 2012

Plaintiff:

Mr. H. Lalsawma
S/o Lamkunga
Zawlnuam Bawrai Veng

By Advocates

: 1. Mr. H. Laltanpuia
2. Miss Rashilla Thapa
3. Mr. H. Vanlallawmzuala
4. Miss Vanlalhumi

Versus

Defendant's:

The President
Village Council
Bawrai Veng, Zawlnuam

By Advocate's

: _____

Date of hearing : 21-02-2012

Date of Order : 21-02-2012

BEFORE

Dr. H.T.C. LALRINCHHANA, MJS
SENIOR CIVIL JUDGE-1

ORDER

This is a suit for decree directing the defendant to revoke the stay order passed by him under No. 43/07/2006-2009/74 Dated Bawrai, the 26th Nov., 2007 and other consequential relief. In the impugned order, the defendant directed the plaintiff to stop and refrain from the development of the land at Tennis Court, Bawrai unless and until further decisions as decided by the Bawrai Village Council sitting dt. 22nd Nov., 2007. In the instant case, the plaintiff submitted that the suit land was purchased by him from one Smt. Lalchhuanthangi. The said transferor Smt. Lalchhuanthangi was alleged having right to transfer as the land was given to predecessor by the then traditional chief of Zawlnuam at the time of chieftainship in Mizoram. Except simple sale deed, the plaintiff could not produce and submit any other documents showing his rights over to the suit land. In that simple sale deed only both parties signed their signatures

on 5/3/1983 and again witnessed by the then President, Village Council, Bawrai Veng, Zawlnuam on 16/1/2005.

Before acceptance of the suit/case, scrutinization of the plaint in the light of O. VII, R. 11 of the CPC is conducted in the presence of learned counsel for the plaintiff whether disclose cause of action or not. The entity of cause of action is well settled 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, the 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.”

Well known, the village council is authorized to issue village council solely for House site in the rural village (But not authorized in urban areas) as per 3 of the Lushai Hills District (House Sites) Act, 1953 (Act No. 1 of 1953), for ready reference, the provision is excerpt as follows-

“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.”

For that direction, 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.

Prior to enactment of the Assam Lushai Hills District (Acquisition of Chief's Right) Act 1954, the chief used to administer their Village to cope with their respective territorial jurisdictions. Each village was indeed completely controlled and managed by a chief's as alleged as a benevolent ruler.

It was only in 1897 after seven years of occupation that Mizoram was made into one Lushai Hills District under the Assam Province. But, the Lushai Hills was taken under *the Assam Frontier Tract Regulation of 1880*. According to the entity of *the Scheduled District Act of 1874*, the laws in force in India were not effective unless specifically notified by the Governor of Assam with or without modifications. When partial self-government was introduced in India in 1919, Lushai Hills was called as a '**Backward area**' and excluded from the formal administration. *The Government of India Act, 1935* also enshrined as '**Excluded Area**'. So, the then Lushai Hills was at that time administered by the Governor of Assam through the Superintendent of the territory as full dictator.

After India independence, under the entity of the Sixth Schedules to the Constitution of India, the then Lushai Hills District was administered. The Lushai Hills District (House Sites) Act, 1953 was firstly enacted, thereafter, the Mizo District (Land and Revenue) Act, 1956 was again chalked out. In respect of agricultural land, the Mizo District (Agricultural land) Act, 1963 was made read with the efficacy of the Lushai Hills District (Jhumming) Regulation, 1954.

Very clear, without having any land pass in accordance with the afore mentioned existing land laws, no right to sue would be arisen. Long time back, as per the Assam Lushai Hills District (Acquisition of Chief's Right) Act 1954, all the traditional chief in Mizo were abolished, after that the plaintiff is bound to obtain any valid pass in accordance with the afore mentioned existing land laws. Admittedly, such valid Pass/LSC is not available with the pleadings of the plaintiff. I find no cause of action in favour of the plaintiff.

Pertinently, the very terminology of *prima facie* is already settled in **Deepali Designs & Exhibits Pvt. Ltd. vs Pico Deepali Overlays Consortium & Ors.** decided on 22 February, 2011 in connection with IA Nos.16915-16916/2010 & IA No.1218/2011 in CS (OS) No.2528/2010, Hon'ble Justice Gita Mittal for Delhi High Court termed that-

"18. On a consideration of the ordinary meaning of the term 'prima facie' and the trend of judicial pronouncement it appears to me that "prima facie case" would mean a case which is not likely to fail on account of any technical defect and is based on some material which if accepted by the tribunal would enable the plaintiff to obtain the relief prayed for by him and would, therefore, justify an investigation."

In the light of the above well settled law, I find no concrete cause of action to investigate further of the case.

Although right to property is a part of human rights as held by the Supreme Court in the case of **Anand Singh & Anr. vs State Of U.P. & Ors.** decided on 28 July, 2010 in connection with Civil Appeal No. 2523 of 2008, I find no right to sue by the plaintiff in the instant mode.

Thus, due to lack of cause of action and locus standi, the instant plaint with connected Miscellaneous Applications No. 50 of 2012 are hereby rejected under O. VII. R. 11 (a) of the CPC at this threshold to avoid undue disturbance of parties. No order as to cost.

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 February, 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/16/2012, Sr. CJ (A)/

Dated Aizawl, the 21st Feb., 2012

Copy to:

1. Mr. H. Lalsawma S/o Lamkunga, Zawlnuam Bawrai Veng through Mr. H. Laltanpuia, Adv.
2. The President, Village Council, Bawrai Veng, Zawlnuam
3. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
4. Case record

PESKAR