

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

CIVIL SUIT NO. 66 OF 2009

Plaintiff:

Mr. F. Vanlalsawma
S/o F. Darnghaka
Residing at House No. A-47
Ramhlun South
Aizawl.

By Advocates

- : 1. Mr. W Sam Joseph
2. Mr. Zochhuana
3. Mr. Hranghmingthanga Ralte
4. Mr. F. Lalenglina
5. Mr. Francis Vanlalzuala
6. Mr. C. Lalfakzuala

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the
Government of Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram
Land Revenue & Settlement Department, Aizawl.
3. The Director
Land Revenue & Settlement Department, Aizawl.
Government of Mizoram, Aizawl.
4. The Assistant Settlement Officer – I
Land Revenue & Settlement
Aizawl District, Aizawl
5. The Assistant Settlement Officer – II

Land Revenue & Settlement
Mizoram, Aizawl

6. The Assistant Settlement Officer – II
Land Revenue and Settlement
Mamit District, Mamit.

7. The Director
Local Administration Department
Mizoram, Aizawl.

8. The Secretary
Local Administration Department
Aizawl.

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

Date of Arguments : 06-06-2012
Date of Judgment & Order : 08-06-2012

BEFORE

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

JUDGMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiff in his plaint submitted that in the year 2004 he came to know from the then Lengpui Village Council President that a plot of land was lying vacant at Chiahpui Kam, Lengpui, hence along with the recommendation of the Village Council, Lengpui, the plaintiff submitted an application to the Revenue Department for issuance of the pass over the said land lying vacant. In pursuance of the application of the plaintiff, the Revenue Department detailed a surveyor and submitted a report that the said land was vacant. The then Director of the LR & S, Govt. of Mizoram moved to the Govt. of Mizoram for the approval for allotting the said portion of land and thereby, accorded approval for the Agricultural

land in favour of the plaintiff by the Under Secretary to the Govt. of Mizoram, Revenue Department in his letter no. K-53011/66/03-REV/Vol-I dated 18th July 2005. On receipt of the approval from the Govt. of Mizoram for issuing the P. Patta in favour of the plaintiff, the defendant no.3 vide his letter no. S.11034/22/03-LSC/DTE(REV) dated Aizawl 23.1.2006 made the allotment in favour of the plaintiff. In pursuance of this letter, the defendant no. 5 issued the Periodic Patta vide P. Patta No. 103405/10/520 of 2006 covering an area of 3.89 Ha (29.05 Bighas). The said plot of land allotted to the plaintiff was given the survey no.294. The description of the land allotted is (a) North : Kawrte, (b) South : Kawrte, (c) East : Kobung chin and (d) West : Chiahpui Hnar. The plaintiff came to know that many others were allotted Agricultural Land around the same location namely Ms. B Zonunsangi, d/o Mr. B. Lalthlengliana, Mr. R. Lalawia s/o R. Lalenga (L), Mr. Malsawmtluanga, s/o H. Ramzauva were allotted Periodic Pattas Nos. 103405/10/603 of 2006, 103405/10/604 of 2006 and 103405/10/422 of 2005 respectively. The plaintiff paid all the requisite dues to the Government of Mizoram and that he made sufficient use of the land for plantation of agricultural products and trees. The plaintiff came to know that the defendant no. 7 and 8 had purchased a plot of land from some private individual adjacent to the plot of land of the plaintiff. After the purchase by the said defendants, their men started developing the land of the plaintiff, thus, the plaintiff submitted a complaint to the defendant no. 3. On receipt of the said complaint, instead of issuing stay order to the said defendants, a letter no. C.13016/M-5/01-DISP/DTE(REV)/78 dated Aizawl, 25th June 2009 was issued by the defendant no.3 calling upon the plaintiff to show cause as to why his plot of land shall not be cancelled and that the said plot of land of the plaintiff is located within the town area. Without considering the reply given by the plaintiff to the show cause notice, the defendant no. 3 had illegally cancelled the plaintiff's land vide Order Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 giving reasons that the land falls within the Lengpui Town Area and that as per the provisions of Section 3(c) of the Mizo District (Agricultural Land) Act 1963, no garden pass should be issued. Though the said cancellation was issued on the 17.9.2009, the defendant no.3 detailed two surveyors to survey the suit land for Public Recreation Park in respect of the Local Administration Department (LAD) from 10-11.9.2009 vide order memo no. D.11013/LAD/22/04-Tech/DTE(REV)/57 dated 9.9.2009. Moreover, if the ground given for cancellation is to be taken into consideration, other persons who were allotted lands under Periodic Pattas around the suit land also should have been cancelled. These

actions of the defendant no.3 shows his bias nature in order to help the defendant nos. 7 & 8. Further, the provision of law quoted in the said cancellation order is irrelevant as it does not say 'town area', but it says 'station area', which is not defined in the Mizo District (Agricultural Land) Act and rules, hence the cancellation order issued on the ground that the suit land falls within the town area is illegal and liable to be set aside.

On issuing of the cancellation order, the plaintiff has the apprehension that he would be evicted from the said land and is hence, forced to approach the court without giving notice as required by S.80 CPC. If the plaintiff waits for the notice period, he would be dispossessed from the suit property as the said defendants and their men are trying to enter the suit land in order to take possession of the land even before they were given any pass.

The plaintiff thus, pray the Court to pass a decree (i) declaring that he is the legal and rightful owner of the land covered under P. Patta 103405/10/520 of 2006 and has title, interest and possession of the said land. (ii) to declare the cancellation order issued as illegal and void and that the said land in his name is valid and the same to be converted in to Land Settlement Certificate. (iii) to issue permanent and mandatory injunction to the defendants no. 1-6 from issuing any pass over the suit land and restrain the defendants no. 7 & 8 and their men dispossessing him from the suit land.

The defendants no. 1-6 in their written statement stated that the plaintiff has no right over the suit land and that the Government has the power of allotment of land as well as cancellation and the said cancellation was done according to law or by hearing the plaintiff under due process of law.

The defendants no. 7 & 8 in their written statement denied the averments of the plaintiff and stated that the Local Administration Department has been in possession of the suit land, developed and maintained for public purpose and that the plaintiff has never taken possession of the suit land at any point of time.

ISSUES

The following issues were framed by the Court on 10.12.2010 and amended towards correct findings as below-

1. Whether the present suit is maintainable in its present form and style.
2. Whether the cancellation of P.P No.103405/10/570 of 2006 under No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept.. 2009 is validly done or not.
3. Whether the plaintiff is entitled to the relief claim. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Shri F. Vanlalsawma, S/o F. Darnghaka, Residing at House No. A-47, Ramhlun South, Aizawl, Mizoram.(Hereinafter referred to as PW-1)
2. Shri Lalthangkima Tochwawng S/o Thangbuaia (L), Lengpui (Hereinafter referred to as PW-2)

The **PW-1** in his examination in chief reiterated and affirmed the contents of the plaint being the plaintiff himself. He further continued that-

Ext. P-1 is 'Inhmun Dilna Lehkha' submitted by him.

Ext. P-1(a) is his signature.

Ext. P-2 is a copy of Field Verification Form.

Ext. P-3 is a copy of No-Objection certificate.

Ext. P-4 is a copy of Declaration by Land Holders.

Ext. P-5 is a copy of approval of allotment of Agricultural Land.

Ext. P-6 is a copy of Periodic Patta No.103405/10/520 of 2006 which is issued in his name.

Ext. P-6(a) is his signature.

Ext. P-7 is a copy of Show Cause Notice sent by the Asst. Director, LR&S.

Ext. P-8 is a copy of reply to Show Cause Notice sent by him.

Ext. P-8(a) is his signature.

Ext. P-9 is a copy of cancellation order.

Ext. P-10 is a copy of Order dt. 09.09.09 issued by Asst. Director of Survey, LR & S.

During cross examination, **PW-1** stated that he had not submitted a complaint letter to the Revenue Dept. on receiving a cancellation letter. He is of the knowledge that the Government has the power to cancel suit land, however, it should have relevant reasons for the same. There existed certain number of trees and bamboos which is not planted by him.

The **PW-2** in his examination in chief stated that he knows the plaintiff and that he has a plot of land at Chiahpui Kawr, Lengpui, Aizawl District covered by Periodic Patta No. 103405/10/520 of 2006 pertaining to Survey No. 294. In the year 2004, the Village Council of Lengpui was intended to allot a land to the villagers between Chiahpui Lui and Chiahte Lui. Since the VC could not allot a plot of land, Site Allotment Advisory Board (SAAB) was formed for the said area. With the recommendations of the SAAB, the VCP of Lengpui issued No Objection Certificates to the applicants. The plaintiff is also allotted the said plot of land by the Revenue Department along with many others and the LAD never applied for allotment of land at that time. No other passes were cancelled by the Revenue Department except the plaintiff's periodic patta.

During cross examination, **PW-2** stated that he is not of the knowledge of the plaintiff's Periodic Patta and the area of the suit land. He has no knowledge of recommendation letter provided by SAAB for the allotment of the plot of land.

For the defendant nos 1-6:

The defendant no. 1-6 had produced only one witness namely –

1. Shri K. Lalhmuakliana S/o F. Darngbaka, House no. A-47, Ramhlun South, Aizawl. (hereinafter referred to as DW-1 for Def. no. 1-6)

The **DW-1 for Def. no. 1-6** in his examination in chief deposed that the Periodic Patta of the plaintiff was cancelled with prior approval of the

Government and the said Periodic Patta was issued against Notification No. LRR/A-76/86/6 (A) dt. 10.6.1983 and in violation of S. 3 of the Mizo District (Agricultural Land) Act, 1963 and that the said Periodic Patta cannot be declared as a valid pass. Ext. D-1 is the signature of Mr. K. Sangthuama, the then Under Secretary, Revenue Department.

During his cross examination, he further deposed that he did not know the significance of the numbers given in Periodic Pattas issued in favour of the plaintiff as well as Ms. Zonunsangi, Mr. R. Lalawia and Mr. Malsawmtluanga but he knew that the other numbers given in the P. Pattas such as 520/2006, 603/2006, 604/2006 and 422/2005. He admitted that Ext. P-6 is issued by their Department. He did not find any notification purported to have been issued u/s 3 of the Mizo District (Agricultural Land) Act, 1963 in the court records. He admitted that they did not issue any show cause notice to Ms. B. Zonunsangi, Mr. R. Lalawia and Mr. Malsawmtluanga. Although their Department cancelled the P. Patta of the plaintiff, no other P. Pattas around the P. Patta of the plaintiff were not cancelled. He did not know whether any Pass is issued in favour of LAD or not. He admitted that without mentioning public purpose, cancellation of the P. Patta of the plaintiff was made. He also admitted that if notification is issued u/s 3 of the Mizo District (Agricultural Land) Act, 1963, all the P. Pattas issued around the land covered by P. Patta No. 520/2006 should also be cancelled but so far as his knowledge, those P. Pattas were not cancelled. He admitted that in the reply letter of show cause notice, the plaintiff mentioned that around his land, there namely- Mr. Sainghaka, Mr. Lalfakzuala, IAS, Mr. Vanhela Pachuau, IAS, Mr. R. Thansanga Director, P&Sons, Mr. Ruatkima, Kanan YMA Gen Secretary were also occupied. He also admitted that when the P. Patta of the plaintiff was issued, it was a vacant land. In his knowledge, the LAD, Govt. of Mizoram interested in processing the land covered by P. Patta No. 520/2006.

For the defendant nos 7-8:

The defendant no. 7 & 8 had produced two witnesses namely -

- 1 Shri Vanlalramhluna, Under Secretary, LAD (hereinafter referred to as DW-1 for Def. no. 7 & 8)
2. Shri Rinsailova J.E, Local Administration Department (hereinafter referred to as DW-2 for Def. no. 7 & 8)

The **DW-1 for Def. no. 7 & 8** in his examination in chief deposed that that Ext. D-11 is the written statement submitted by the Defendant No. 7 & 8 and that Ext. D-11 (a) is the signature of the then Under Secretary, Pu P. C. Laltanpuia, Local Administration Department, Govt. of Mizoram.

But he could not be available for cross examination.

The **DW-2 for Def. no. 7 & 8** in his examination in chief deposed that when the defendant started occupying the suit land in 2004, the suit land did not belong to the plaintiff and in 2005, he used to settle and look after the suit land and the plaintiff never occupied or touched the suit land. He also deposed that when they started clearing the suit land, no one made a complaint to the LAD.

During cross examination, **DW-2 for Def. no. 7 & 8** stated that since he was transferred in the year 2006 to Serchhip, LAD, he has no knowledge as to when the LAD Dept. entered into the suit land. There is no pass issued by any authority in respect of land for the purpose of maintaining Lengpui Park and he has no knowledge of the area of land for proposed Park. It is a fact that they do not have any pass issued by the competent authority for claiming the suit land and that he is not deposing falsely.

TERMS OF RIVALRY

At the time of arguments, Mr. W. Sam Joseph, learned counsel for the plaintiff argued that on the basis of oral evidence adduced by the lone witness of defendant no. 1-6 during his cross examination, the impugned cancellation order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 is without any legal basis, the partial act of state defendants upon the plaintiff is in contravention of equality as enshrined under Article 14 of the Constitution of India and also violation of Article 300 A of the Constitution of India by having reliance in the decision of Hon'ble Supreme Court in **Anand Singh & Anr. vs State Of U.P. & Ors.** decided on 28 July, 2010 in connection with Civil Appeal No. 2523 of 2008. As all documents exhibited were also admitted by the defendants, the defendants can be adjudicated as admitted the entire contents thereof by taking reliance in **Sitaram Motilal Kalal V. Santanuprasad Jaishanker Bhatt**, AIR 1966 SC 1697: (1996) 1 SCWR 974. Thus, concluded that they are entitled the relief sought in the plaint.

On the other hand, Mr. R. Lalremruata, learned AGA argued that there is no question of violation of equality and no laches is committed for issuance of the impugned order.

FINDINGS

Issue No. 1

Whether the present suit is maintainable in its present form and style.

A requisite court fees at Rs. 5000/- is paid by the plaintiff in his plaint. Meanwhile, verification supported by paragraph wise affidavit is made. In this catena, the provisions of sub- rule (4) of rule 15 under Order VI of the CPC is fully complied with. Exemption order from prior legal notice to the state defendants is also made on 8/10/2009. This issue is therefore decided in favour of the plaintiff whilst the suit is filed during 2000.

Issue No. 2

Whether the cancellation of P.P No.103405/10/570 of 2006 under No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept., 2009 is validly done or not.

As admitted by the lone witness of defendant no. 1-6 during his cross examination, the impugned cancellation order marked as Ext. P- 9 was passed/issued as Lengpui is now declared as town under Notification No. LRR/A-76/86/6 (A) dt. 10.6.1983. Thus, P. Patta No. 520/2006 was alleged in contravention of S. 3 (c) of the Mizo District (Agricultural Land) Act, 1963 based on the Government letter under No. C. 18016/7/2009- REV Dt. 4th Sept., 2009.

However, as admitted by the lone DW for defendants 1-6, a copy of Notification No. LRR/A-76/86/6 (A) dt. 10.6.1983 and Government letter under No. C. 18016/7/2009- REV Dt. 4th Sept., 2009 were not placed on case record to ascertain that whether the impugned cancellation order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 marked as Ext. P-9 is validly issued or not. Like in this crux, observation was made in **Indira Nehru Gandhi Vs. Raj Narain** reported in [1975 Supp SCC 1], it was held thus-

"19. Furthermore a party in order to get benefit of the provisions contained in Section 114(f) of the Indian Evidence Act must place some evidence in support of his case. Here the Respondent failed to do so."

And also in **Municipal Corporation, Faridabad Vs. Siri Niwas** reported in [(2004) 8 SCC 195].

"15. A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration in the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds."

Thus, I find no sufficient materials and evidence to ascertain the validity on the said impugned cancellation order Ext. P-9.

On close look of the entity of P. Patta No. 520 of 2006 marked as Ext. P- 6, it was issued u/s 4 (2) of the Mizo District (Agricultural Land) Act, 1963 with the previous approval of the Government of Mizoram as elicited by Ext. P-5. For the purpose of legality of the action of the state defendanst, Section 3 of the Mizo District (Agricultural Land) Act, 1963 is relevant to examine which reads thus-

"3. Application of the Act:

This Act shall apply to all lands within the Mizoram, except the following:

- (a) Land included in the State Forest Reserve.
- (b) The soil of all Government and Public roads.

- (c) All lands in the Station Reserves of Aizawl, Lunglei, Sairang, Demagiri, Champhai, North Vanlaiphai or any other area or areas as may be notified from time to time, by the Government of Mizoram.

But here as already found, a copy of Notification No. LRR/A-76/86/6 (A) dt. 10.6.1983 where declaration of Lengpui as town with its boundaries whether the suit land is within Lengpui town area or not.

Section 7 of the Mizo District (Agricultural Land) Act, 1963 for ready reference is again excerpts thus-

“7. Rights over Land:-

- (1) The Patta-holder shall have heritable and transferrable right of use on, or of sub-letting in his land subject to:-
 - (a) The payment of all revenues and taxes from time to time, legally assessed or imposed in respect of the land
 - (b) Such terms and conditions as are imposed by rules made under this Act.
- (2) 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 provisions of this Act.”

Clause (8) of rule 2 of the Mizo District (Agricultural Land) Rules, 1971 further stated that-

“Periodic Patta holder” means a holder of Periodic Patta who has not acquired the Patta holder’s right under section 7 of the Act.”

Rule 42 of the Mizo District (Agricultural Land) Rules, 1971 further contemplated that-

“42. Cancellation of Periodic Patta, Patta and Periodic Patta for Fishery.

If any arrear of land revenue with additional charge cannot be recovered by attachment and sale of property or land of the defaulter, or if the holder of Periodic Patta, Patta or Periodic Patta for Fishery violates any terms of his Patta,

such Patta may be cancelled by the Executive Committee after giving him opportunity to defend himself.”

In the back page of P. Patta No. 520 of 2006, terms and conditions were imposed, amongst 11 conditions, paragraph 9 of the said terms and conditions stipulated that-

“The Periodic Patta may be cancelled without compensation at any time even before the expiry of the period of allotment, if the same is required for the public purposes, but, after sufficient time shall be given to the holder for collection of the Agricultural products in it.”

The act of the defendant no. 3 in the instant case is quasi judicial in nature where natural justice with reasons is fully applicable as also recently held 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, their Lordship of Hon’ble Supreme Court recognized that-

“23. The traditional English Law recognised the following two principles of natural justice:

(a) *Nemo debet esse judex in propria causa*: No man shall be a judge in his own cause, or no man can act as both at the one and the same time - a party or a suitor and also as a judge, or the deciding authority must be impartial and without bias; and

(b) *Audi alteram partem*: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

However, over the years, the Courts through out the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time, the Courts have repeatedly emphasized that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions, if any,

applicable, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice.”

In respect of ‘*reasoning*’, very recently, it is included as a part of rights even in the quasi judicial performance as 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-

“36. The emphasis on recording reason is that if the decision reveals the ‘inscrutable face of the sphinx’, it can be its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

Undisputedly, for the purpose of public interest as embodied under paragraph 9 of the terms and conditions stipulated in the P. Patta No. 520 of 2006 and violation of others terms and conditions clearly imposed in the said P. Patta and by virtue of Rule 42 of the Mizo District (Agricultural Land) Rules, 1971, the instant P. Patta No. 520 of 2006 can be cancelled but reasons in this lawful ground is not found in the facet of the impugned cancellation order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 marked as Ext. P-9. Thus, the said order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 marked as Ext. P-9 can not be held as validly made and is liable to set aside and quash.

Issue No. 3

Whether the plaintiff is entitled to the relief claim. If so, to what extend.

Before dealing the issues, it may be indispensable to reiterate the prayer of the plaintiff as follows-

- (i) declaring that he is the legal and rightful owner of the land covered under P. Patta 103405/10/520 of 2006 and has title, interest and possession of the said land.
- (ii) to declare the cancellation order issued as illegal and void and that the said land in his name is valid and the same to be converted in to Land Settlement Certificate.
- (iii) to issue permanent and mandatory injunction to the defendants no. 1-6 from issuing any pass over the suit land and restrain the defendants no. 7 & 8 and their men dispossessing him from the suit land.

At this juncture, as per the findings above, the plaintiff is entitled to declare as the legal and rightful owner of the land covered under P. Patta 103405/10/520 of 2006 and has title, interest and possession of the said land. Furthermore, the impugned cancellation order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 marked as Ext. P-9 is held as illegal and void. Meanwhile, conversion of P. Patta into Land Settlement Certificate is within the domain of the defendants 1-6 in their executive supremacy unless arbitrary and capricious act, interference of this court is not called for at this stage by observing the ratio laid down in **State Of T.Nadu & Ors. vs K Shyam Sunder & Ors.** decided on 9 August, 2011 in connection with Civil Appeal Nos. 6015-6027/2011, the Supreme Court has held that-

“28. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by shift or contrivance. (See: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; M.C. Mehta v. Kamal Nath & Ors., AIR 2000 SC 1997; and Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., JT 2010 (11) SC 273).”

As the plaintiff is already declared as the legal and rightful owner of the land covered under P. Patta 103405/10/520 of 2006, all the defendants are liable to restrain to disturb the peaceful possession and

enjoyment of rights of the plaintiff over the said P. Patta 103405/10/520 of 2006 except due process of law whilst the defendants 7 and 8 do not have any legal rights either Patta or LSC over to the suit land to intrude in the management and enjoyment of the property under P. Patta 103405/10/520 of 2006. Reliance taken by Mr. W. Sam Joseph at the time of argument is attracted 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, the Supreme Court has held that-

“30. The power of eminent domain, being inherent in the government, is exercisable in the public interest, general welfare and for public purpose. Acquisition of private property by the State in the public interest or for public purpose is nothing but an enforcement of the right of eminent domain. In India, the Act provides directly for acquisition of particular property for public purpose. Though right to property is no longer fundamental right but Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law.”

Only under the umbrella of due process of law, interference over to the suit land by the defendants is permissible unlike the instant arbitrary and capricious order/act.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, it is hereby ORDERED and DECREED that-

1. The plaintiff is declared as the legal and rightful owner of the land covered under P. Patta 103405/10/520 of 2006 and has title, interest and possession of the said land. Furthermore, the impugned cancellation order under Memo No. C.13016/M-5/01-DISP/DTE (REV) dated 17th Sept. 2009 marked as Ext. P-9 is held as illegal and void and is hereby set aside and quashed accordingly.
2. The defendants are further restrained from disturbing the plaintiff from his peaceful possession and enjoyment of his rights over the said P. Patta 103405/10/520 of 2006 except due process of law.

No order as to costs of the suit.

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 8th June, 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/66/2009, Sr. CJ (A)/

Dated Aizawl, the 8th June, 2012

Copy to:

1. Mr. F. Vanlalsawma S/o F. Darnghaka, Residing at House No. A-47, Ramhlun South, Aizawl through Mr. W. Sam Joseph, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
5. The Assistant Settlement Officer – I, Land Revenue & Settlement, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
6. The Assistant Settlement Officer – II, Land Revenue & Settlement, Mizoram, Aizawl through Mr. R. Lalremruata, AGA
7. The Assistant Settlement Officer – II, Land Revenue and Settlement, Mamit District, Mamit through Mr. R. Lalremruata, AGA
8. The Director, Local Administration Department, Mizoram, Aizawl through Mr. R. Lalremruata, AGA

9. The Secretary, Local Administration Department, Aizawl through
Mr. R. Lalremruata, AGA
10. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
11. Case record

PESKAR