

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

CIVIL SUIT NO. 66 OF 2010

Plaintiffs:

1. Mr. Lianchungnunga
S/o Hrangiaia (L)
R/o Chaltlang, Dawrkawn, Aizawl
2. Smt. Lalawmpuii
D/o Lianchungnunga
R/o Chaltlang, Dawrkawn, Aizawl
3. Smt. Esther Zorinmawii
D/o Lianchungnunga
R/o Chaltlang, Dawrkawn, Aizawl
4. Smt. Lianhmingthangi
D/o Hrangiaia (L)
R/o Chanmari, Aizawl
5. Mr. Lalliankima
S/o Hrangiaia (L)
R/o Chanmari, Aizawl.

By Advocates

- : 1. Mr. M. Zothankhuma, Sr. Adv.
2. Mr. Vanlalhriata
3. Mr. Lalfakawma
4. Ms. Zonuni Hrahse

Versus

Defendants:

1. The State of Mizoram,
Represented by the Secretary to the Govt. of Mizoram,
Land Revenue and Settlement Department
Govt. of Mizoram, Aizawl
2. The Director,
Land Revenue and Settlement Department
Govt. of Mizoram, Aizawl
3. The Collector/Deputy Commissioner
Aizawl District: Aizawl
4. The Chairman
Presbyterian Church

Vaivakawn Pastor Bial, Aizawl
Phunchawng Veng

By Advocates

:

For the defendants no. 1-3 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendants no. 4 : 1. Mr. C. Lalramzauva, Sr. Adv.
2. Mr. A. Rinliana Malhotra, Adv.
3. Mr. Joseph Lalfakawma, Adv.
4. Mr. T.J. Lalnuntluanga, Adv.
5. Mr. K. Laldinliana, Adv.
6. Mr. James Thanghmingmawia, Adv.

Date of Arguments : 28-06-2012

Date of Judgment & Order : 29-06-2012

BEFORE

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

JUDGEMENT & ORDER

BRIEF STORY OF THE CASE

The plaintiffs have filed the instant suit for declaring the plaintiffs as owner of the lands bearing LSCs no. AZL. 2523 of 1987 to AZL. 2527 of 1987, LSCs no AZL. 2534 of 1987 to AZL. 2536 of 1987, LSCs no. AZL. 2530 of 1987, AZL. 2537 of 1987, LSC no. AZL. 2531 of 1987, LSCs no. AZL. 2532 of 1987, AZL. 2539 of 1987, LSCs no. AZL. 2533 of 1987 and LSC No. AZL. 2538 of 1987 and for declaring that the plaintiffs are entitled to the rent at the rate to be assessed by the collector for occupation of the plaintiffs land by the defendant No. 4 from July 2000 till vacant possession of the land is given back to the plaintiffs and to declare the land lease bearing number NISC 72/1995 issued to the defendant no. 4 as null and void. Therefore directing the defendants to give vacant possession of the land covered by the said LSCs to them.

The defendants No. 1 – 4 by submitting their written statement had raised objections to the maintainability of the suit and had also contended, among other things that the LSCs of the Plaintiffs were directly converted from the VC Pass meant for garden, issued to Sri. K. Thangdailova by the VCP of Sakawrtuichhun, and partitioned into LSCs without the prior approval of the competent authority. It was further contended by them that the village council has no authority to allot any land for agricultural purpose as per section 3 (1) of the Lushai Hills (House Site) Act, 1953, while the Land lease No. MISC 72/1995 was issued to the Defendant No. 4 for

construction of its Church building after observing all required formalities. Consequently, they have prayed for dismissing the suit.

The Defendant No. 4 had also filed its written statement by challenging the maintainability of the suit and also stated that there is no cause of action in favour of the Plaintiffs and against the answering defendants. The suit is also bad for compliance of the provisions of Section 80 CPC by the Plaintiff and liable to be dismissed. In addition to the said preliminary objections, it was also contended by the defendant No. 4 that the Land lease No. 72/1995 was issued to the said charge after the authorities concerned came to the conclusion that the land which has been allotted to it was a vacant land. Subsequent to the said allotment the defendant No. 4 had constructed the church building therein in the year 1995 and started occupying it ever since till date. As on today the Church Building has been so constructed with RCC structure with effect from the year 2008 for which a sum of Rs. 20 lakhs (approx) have been used for the said construction. It has been further contended that the plaintiffs had never possessed any portion of the said land at any point of time till date. In a nut shell, the main contention of the defendant No. 4 is that since the defendant No. 4 has been occupying and possessing the suit land covered by the said land lease No. MISC 72/1995 with effect from 1995 itself till date, it is in adverse possession of the suit land for about 15 years before the suit was filed and that the claim of the plaintiffs is bared by limitation, i.e. Article 65 of the Limitation Act, 1963.

ISSUES

The following issues were framed on 08.12.2010 and amended towards fructification of justice such as -

1. Whether the suit is maintainable in its present form and style
2. Whether the plaintiffs has cause of action against the defendants by having validity of their LSCs
3. Whether the suit is barred by law of limitation, estoppels and acquiescence
4. Whether the landed property covered by Land Lease No. Misc. 72 of 1995 overlapped the landed properties of the plaintiffs. If so, which landed documents should be prevailed/precedent
5. Whether the Land Lease No. Misc. 72 of 1995 is legally and validly issued or not
6. Whether the plaintiffs are entitled to the relief claimed. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiffs:

The plaintiff had produced only witness namely- Mr. Lianchungnunga S/o Hrangia (L), Chaltlang Dawrkawn, Aizawl (Hereinafter referred to as the PW). He exhibited the following documents-

Ext. P-1 is a copy of LSC No. AZI 2523 /1987 issued to him which has an area of 1.61 Bighas located at Sakawrtuichhun, Sairang road.

Ext. P-2 is a copy of LSC No. AZL 2524 of 1987 issued

Ext. P-3 is a copy of LSC No. AZL 2525 of 1987 issued to him by the Revenue Department which has an area of 1.46 Bighas located at Sakawrtuichhun, Sairang Road An”

Ext. P-4 is a copy of LSC No. AZL 2526 of 1987 issued to him by the Revenue Department, which has an area of 1.42 bighas, located at Sakawrtuichhun Sairang Road An”

Ext. P-5 is a copy of LSC No. AZL 2527 of 1987 issued to him by the Revenue Dept which has an area of 2.00 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-6 is a copy of LSC NO. AZL 2534 of 1987 issued to him by the Revenue Dept which has an area of 1.80 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-7 is a copy of LSC No. AZL 2535 of 1987 issued to him by the Revenue Dept which has an area on 1.08 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-8 is a copy of LSC No. AZL 2536 of 1987 issued to him by the Revenue Department which has an area of 1.02 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-9 is a copy of LSC No. AZL 2530 of 1987 issued to his daughter, Lalawmpuii i.e Plaintiff No. 2 by the Revenue Dept which has an area of 1.56 bighas located at Sakawrtuichhun, Sairang Road An”

Ext. P-10 is a copy of LSC No. AZL 2537 of 1987 issued to his daughter, Lalawmpuii i.e Plaintiff No. 2, by the Revenue Department which has an area of 1.25 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-11 is a copy of LSC No. AZL 2531/1987 issued to his daughter, Esther Zorinmawii i.e Plaintiff No. 3 by the Revenue Dept, which has an area of 1.62 bighas located at Sakawrtuichhun, Sairang Road.

Ext. P-12 is a copy of LSC No. AZL 2532 /1987 issued to his sister Lalhmingthangi, i.e the Plaintiff No. 4 by the Revenue Dept which has an area of 1.27 bighas located at Sakawrtuichhun, Sairang Road An”

Ext. P-13 is a copy of LSC No. AZL 2539 /1987 issued to his sister Lianhmingthangi, i.e the Plaintiff No. 4 by the Revenue Dept, which has an area of 1.01 bighas, located at Sakawrtuichhun, Sairang Road.

Ext. P-14 is a copy of LSC No. AZL 2533/1987 issued to his brother Lalliankima i.e the Plaintiff No. 5 by the Revenue Dept, which has an area of 1.45 bighas located at Sakawrtuichhun, Sairang Road “An”.

Ext. P-15 is a copy of LSC No. AZL 2538/1987 issued to his sister Lianhmingthangi, i.e the Plaintiff No. 4 by the Revenue Dept which has an area of 0.91 bighas located at Sakawrtuichhun, Sairang Road chung.

Ext. P-16 is a tax clearance certificate dt. 26.3.2010 issued to him by the Asst to Deputy Commissioner, Land Revenue & Settlement, Aizawl showing that he have cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2524 of 1987.

Ext. P-17 is a copy of tax clearance certificate dt. 26.3.2010 issued to him by the Asst to Deputy Commissioner, Land Revenue & Settlement, Aizawl showing that he have cleared all the taxes dues from me upto 2008-2009 in respect of LSC No. 2525 of 1987

Ext. P-18 is a copy of a tax clearance certificate dt. 26.3.10 issued to him by the Asst to Deputy Commissioner, Land Revenue & Settlement, Aizawl showing that he have cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2526 /1987.

Ext. P-19 is a copy of tax clearance certificate dt. 26.3.2010 issued to him by the Asst to Deputy Commissioner, Land Revenue & Settlement Aizawl showing that he have cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2527/1987.

Ext. P-20 is a copy of tax clearance certificate dt. 26.3.10 issued to him by the Asst to Deputy Commissioner , Land Revenue & Settlement Aizawl showing that he have cleared al the taxes dues from him upto 2008-2009 in respect of LSC No. 2534/1987.

Ext. P-21 is a tax clearance certificate dt. 26.3.10 issued to him by the Asst to Deputy Commissioner, Land Revenue & Settlement, Aizawl showing that he have cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2535 /1987.

Ext. P-22 is a tax clearance certificate dt. 26.3.10 issued to him by the ADC, LR&S Aizawl showing that he have cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2536/1987.

Ext. P-23 is a tax clearance certificate dt. 26.3.10 issued to Lalawmpuii by the ADC, LR&S, Aizawl showing that she has cleared all the taxes dues from her upto 2008-2009 in respect of LSC NO. 2530/1987.

Ext. P-24 is a copy of the tax clearance certificate dt.26.03.10 issued to Lalawmpuii, plaintiff No.2 by the ADC, LR and S . Aizawl showing that she has cleared all the taxes dues from her upto 2008-2009 in respect of LSC No.2537/1987.

Ext. P-25 is a copy of the tax clearance certificate dt.26.03.10,issued to Lianhmingthanga, by the ADC, LR and S, Aizawl showing that the has cleared all the taxes dues from her upto 2008-2009 in respect of LSC No. 2532/1987.

Ext. P-26 is a copy of tax clearance certificate dt.26.3.10 issued to Liamhmingthangi, by the ADC, LR&S Aizawl showing that she has cleared al the taxes dues from her upto 2008-2009 in respect of LSC No. 2539 /1987.

Ext. P-27 is a copy of tax clearance certificate dt. 26.3.10 issued to Lalliamkimi by the ADC, LR&S, Aizawl showing that he has cleared all the taxes dues from him upto 2008-2009 in respect of LSC No. 2533/1987

Ext. P-28 is a copy of tax clearance certificate dt. 26.3.10 issued to Plaintiff No. 4 by the ADC, LR&S, Aizawl, showing that she has cleared all the taxes dues from her upto 2008-2009 in respect of LSC No. 2538/1987

Ext. P-29 is a copy of house payee certificate dt. 18.12.09 issued by ASO, LR&S showing that he is a house tax payer of Mizoram

Ext. P-30 is a copy of house payee certificate issued by the ASO, LR&S showing that Lalawmpuii is a house tax payer of Mizoram

Ext. P-31 is a copy of house payee certificate issued by the ASO, LR&S showing that Lianhmingthangi is a house tax payer of Mizoram.

Ext. P-32 is a copy of house payee certificate issued by ASO, LR&S showing that Lalliankima is a house tax payer of Mizoram

Ext. P-33 is a copy of certificate of land lease NO. MISC 72/1995 issued to the Chairman Presbyterian Church, Vaivakawn, Pastor Bial.

Ext. P-34 is a copy of a Letter dt. 12.7.02 issued to Lianhmingthangi by the Deputy Director, LR&S.

Ext. P-35 is a copy of Letter dt. 8.5.09 wrote by Lianhmingthangi & Ors to the Director LR&S regarding the illegal allocation of Pass within the LSCs belonging to them (All the documents exhibited as exhibit P-I to 35, except Ext P-33 are objected by the Defendants as the said LSCs in the name of the Plaintiffs are issued without approval of the Government

For the defendants 1-3:

The defendants 1-3 had produced the only one witness namely- Mr. K. Lalhmuakliana, Asst. Director, LR & S Department (Hereinafter referred to as DW for defendants 1-3). He exhibited that Ext. D-1 is their written statement, Ext. D-1 (a) is the signature of Mr. K. Sangthuama, the then Under Secretary to the Govt. of Mizoram, Revenue Department.

For the defendant No. 4:

The defendant No. 4 had also produced the following witnesses namely-

1. Mr. Lalchungnunga S/o Chawngdenga (L), Phunchawng Veng, Aizawl (Hereinafter referred to as DW-1 for defendant No.4)
2. Mr. Lalbuatsaiha S/o Hrangsiama (L), Phunchawng Veng, Aizawl (Hereinafter referred to as DW-2 for defendant No.4)
3. Mr. K. Lalrova S/o Chhunruma (L), Phunchawng Veng, Aizawl (Hereinafter referred to as DW-3 defendant No.4)

Reports of local commission:

As directed by the court, the Survey Commission was performed by the Settlement Officer, Land Revenue and Settlement Department and thereby submitted a report thereof under No. C. 180156/CS-111/07- DC (REV)/165, Dated Aizawl, the 8th June, 2012, it was done in the presence of plaintiffs and defendant no. 4 with Mr. Ramnghinglova, Revenue Field Worker performed on 5/1/2012. Which clearly revealed that the following LSCs of the plaintiffs are overlapped by the Misc Pass No. 72/95 of the defendant no. 4 namely-

1. LSC No. 2525 of 1987- Plot No. III
2. LSC No. 2526 of 1987- Plot No. IV
3. LSC No. 2527 of 1987- Plot No. V
4. LSC No. 2538 of 1987- Plot No. XIV (Lianhmingthangi LSC)
5. LSC No. 2539 of 1987- Plot No. XV (Lianhmingthangi LSC)

POINTS OF ARGUMENTS

Mr. M. Zothankhuma, learned senior counsel for the plaintiff argued that from reading of the provisions of sections 7 and 12 the Mizo District (Land and Revenue) Act, 1956, it is clear that the rights of a person over a land for which he holds a valid LSC is absolute and conclusive. That it may be submitted that the plaintiffs have been holding LSCs over the Suit Land since 1987 validly issued by the defendant no. 2 and have been paying the prescribed annual land tax regularly as can be seen from the tax payment documents that have annexed to the plaint. As such, the plaintiffs' title and interest over the Suit Land is unconditional, absolute and final so far as the land laws of the State of Mizoram are concerned. Thus the issuance of the certificate of land lease bearing MISC 72/1995 in favour of defendant no. 4 by the defendant no. 2 is contrary to the prevailing land laws of the State of Mizoram and is as such *void ab initio*.

He further submitted that in the instant case, the plaintiffs have been holding LSCs validly issued by the defendant no. 2 since 1987 over the Suit Land. As such, by virtue of Section 8 of the Mizo District (Land and Revenue) Act, 1956, the defendant no. 2 had absolutely no authority to issue the certificate of land lease in favour of defendant no. 4 over lands which were not vacant in the first place. As such, the issuance of the certificate of land lease bearing MISC 72/1995 in favour of defendant no. 4 by defendant no. 2 was without any legal authority and as such, the same should be declared null and void. Mr. M. Zothankhuma further argued that as per the provision of the Mizo District (Land and Revenue) Act, 1956, a lease can be issued only in respect of a vacant land. The lease having being issued in respect of lands over which valid LSCs have been issued, the certificate of land lease bearing MISC 72/1995 is null, void without any force of law as the same has been issued in contravention of the land laws of Mizoram.

Mr. M. Zothankhuma concluded his arguments that from the evidence adduced by the parties, it is clear that the Plaintiff LSCs was issued earlier

than the Defendant No. 4 Land Lease. It is also clear that the issuance of the Defendant No. 4 Land Lease was due to the fault and negligence of the Revenue Department as the land covered by the Land Lease was not a vacant land. Thus, the Church and other building that the Defendant No. 4 is constructing upon the Plaintiff's land are encroachments made due to the fault of the Revenue Department by issuing land lease over a non-vacant land.

On the other hand, Mr. C. Lalramzauva, learned senior counsel for the defendant no. 4 vehemently argued that from the facts and circumstances which can be drawn from appreciating evidences adduced therein, it is crystal clear that the very foundation of the LSC of the plaintiffs being VC Pass meant for garden issued to Shri K. Thangdailova by the VCP Sakawrtuichhun on 10.3.70, and conversion of the said Pass being without the approval of the Govt, the claim of the plaintiffs cannot be upheld in law. The LSCs of the plaintiffs, on the strength of which the plaintiffs are claiming the suit land, covered by Land Lease No. MISC 72/1995, are illegal and thus the plaintiffs cannot be said to have any right over the lands covered by such illegal LSCs. It is an undisputed fact that the basis of the said LSCs was the VC Pass for Garden which is not transferable. At the same time, the defendant No. 4 being in possession of the suit land on the strength of the allotment made to it under the said Land Lease Certificate since 1995 till date adverse to the claim of the plaintiffs, accordingly the claim of the plaintiff is hit by the provision of Article 65 of the Limitation Act, 1963. Furthermore, the suit land having been occupied by the defendant No. 4 as a place of worship for the past so many years, it is not in the interest of justice to disturb or dislocate such peaceful possession at the instance of the plaintiffs whose claims are defective in law.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style

A requisite court fees at Rs. 5000/- is paid by the plaintiffs in their plaint. Meanwhile, verification supported by affidavit is made by the plaintiffs in terms of the provisions of sub- rule (4) of rule 15 under Order VI of the CPC. Meanwhile, exemption order from prior legal notice was also passed on 31.3.2010 in Misc J. No. 83 of 2010 due to urgency of the case. Thus, this issue is decided in favour of the plaintiffs.

Issue No. 2

Whether the plaintiffs has cause of action against the defendants by having validity of their LSCs

As relies by Mr. M. Zothankhuma, Section 7 of the Mizo District (Land and Revenue) Act, 1956 reads:

“Settlement-holder's right over land:

The settlement-holder shall have heritable and transferable right of use on or of sub-letting in his land subject to: -

- a) *the payment of all revenue and taxes from time to time legally assessed or imposed in respect of the land: -*
- b) *such terms and conditions as are expressed in his settlement lease, and the rules made thereunder.”*

And Section 12 of the Mizo District (Land and Revenue) Act, 1956 reads:

“Local ownership over land-possession of such certificates showing details of boundary area and assessed revenue to be paid annually shall be deemed to be the conclusive proof that the land has been settled with the holder of the certificate and that all rights and interests arising out of such settlement have vested in such holder of the certificate.”

As elicited by their facets, the LSCs of the plaintiffs were issued under section 11 of the Mizo District (Land and Revenue) Act, 1956 which reads as under

“11. Certificate of possession and assessment:

A settlement –holder shall, on the completion of survey and demarcation of boundary, obtain a certificate of recording for the details of that land on payment of such amount of recording fee as may be prescribed. Different rates of fees may be prescribed for any local area of class of land.”

The LSCs of the plaintiffs exhibited during the proceedings were issued as per the prescribed form under Appendix- ‘A’ of the Mizo District (Land and Revenue) Rules, 1967 and were issued by the Assistant Settlement Officer, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl containing their respective boundary descriptions, mode of issuance like direct LSC from the then Village Council Pass. Ext. P- 16-28 also revealed that all revenue taxes were regularly and timely paid by the plaintiffs to the Government.

Although argued, Mr. C. Lalramzauva fails to produce any provisions of law and documents purporting that without prior approval of the government, no LSCs can be issued on the basis of the deposition of the lone DW for defendants 1-3. Although the said lone DW for defendants 1-3 deposed that the village council pass where emerging from the LSCs of the plaintiffs was issued on 10/3/1970 by the Sakawrtuichhun Village Council for the purpose of agricultural land which is beyond the competency of village council in terms of S. 3 (1) of the Lushai Hills District (House Sites) Act, 1953 and the Revenue department thereby found deceiving and misguiding efforts for issuance of the LSCs of the plaintiffs. Whilst issued the LSCs of the plaintiffs in 1987 and remains not cancel by the government and no counter claim is preferred how to delve further on it. It is the Revenue authorities who issued the LSCs of the plaintiffs and put in their record as admitted by the lone DW for defendants 1-3 during his cross examination and also by collecting timely revenue taxes from the said LSCs. During cross examination of the lone DW for defendants 1-3, he admitted

that he did not have any documents showing that the LSCs of the plaintiffs were illegally issued and done without prior approval of the competent authority.

As the defendants fails to file any counter claim for challenging the validity of the LSCs of the plaintiffs towards cancellation. No further elaboration is solicited. It will be answered by the recent observations of Hon'ble Supreme Court in **Lalrivenga & Anr. vs State Of Mizoram & Ors.** decided on 13 September, 2011 in connection with Civil Appeal No. 7825 of 2011 (Arising out of SLP(C) No.18850 of 2006), the Supreme Court has held that-

“14. We also agree with Shri Mukherjee that the Land Settlement Certificates issued in favour of the appellants could not have been cancelled on the ground that the same were issued without the sanction or approval of the competent authority. The respondents have not controverted the appellants' assertion that vide order dated 18.1.1983, respondent No.2 had authorised the Assistant Settlement Officer-II to process and decide the applications for grant of the Land Settlement Certificates. It is also not in dispute that the appellants had purchased land in 1984 and the Settlement Officer had issued the Land Settlement Certificates in 1987 after duly scrutinizing the applications made for that purpose.”

Indispensably, the plaintiffs with valid LSCs have a cause of action against the defendants in the instant case.

Issue No. 3

Whether the suit is barred by law of limitation, estoppels and acquiescence

No doubt, the law of limitation like in the instant case where the state are put as parties is applicable in the state of Mizoram as held by the Hon'ble Gauhati High Court in **Lalchawimawia & Ors. Vs. State of Mizoram** decided on 5-5-1999 in connection with WP (C) No. 4 of 1996 reported in 1999 (3) GLR 100 and the later case in **L. Biakchhunga vs State Of Mizoram And Ors.** decided on 1/8/2005 and reported in (2006) 2 GLR 610.

In the case at hand, the DWs 1 and 2 for defendant no. 4 in their examination in chief deposed that they constructed a temporary building of church building was constructed in the suit land in 1994 and later obtained Land Lease under No. Misc. 72/1995 with an area of 2.31 bighas, the plaintiff interfere in their possession since 2002 which is corroborated by the version of Mr. M. Zothankhuma stating that the plaintiffs came to know the action of the defendants upon the suit land lately in 2002 as also deposed by the lone PW sometimes in 2000. If it be so, how can it be hit the provision of Article 65 of the Limitation Act, 1963. Law on adverse possession is well settled recently in **Chatti Konati Rao & Ors. vs Palle Venkata Subba Rao** decided on 7 December, 2010 in connection with Civil Appeal No. 6039 of 2003, the Supreme Court has held that-

“The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession.”

In the instant case, there is no pleading for claiming adverse possession by the defendant no. 4 and their version is only during 2002, the plaintiffs came to interfere in their possession. And also in the case of **Karnataka Board of Wakf vs. Government of India and Ors.** (2004) 10 SCC 779. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph of the judgment which is relevant for the purpose reads as follows:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567)"

In the instant case as per the depositions of DWs for defendants 4, the plaintiffs intruded in the suit land and also opened discussions before the Revenue authorities. The Supreme Court rather repined in law of adverse possession in the case of **Hemaji Waghaji Jat Versus Bhikhabhai Khengarbhai Harijan & Others** reported in 2008 (12) SCALE 697, 2008 (10) JT 562 and in the following terms

“34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a

dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.”

In a nutshell, Article 65 contemplated that for possession of immovable property or any interest therein based on title, the period of limitation is for 12 years to be reckoned from when the possession of the defendant becomes adverse to the plaintiff but with the knowledge of the true owner is material as held in **Chatti Konati Rao & Ors. vs Palle Venkata Subba Rao** (supra.). This issue is therefore decided in favour of the plaintiffs.

Issue No. 4

Whether the landed property covered by Land Lease No. Misc. 72 of 1995 overlapped the landed properties of the plaintiffs. If so, which landed documents should be prevailed/precedent.

As revealed by the report of Survey Commission submitted its report dated 07.06.2012, the landed property covered by Land Lease No. Misc. 72 of 1995 overlapped the landed properties of the plaintiffs, which reads as under-

“A dinhmun

1. (a) *Pu Lianchungnunga hian heng LSC panga (5) kan ziah lante hi 1987 ah LSC a siam a ni.*
 (b) *Presbyterian Kohhran, Phunchawng hian 1995 ah MISC Pass (72/'95) hi siam a ni.*
2. *Pu Lianchungnunga LSC-*
 - 1) *LSC No. 2525/'87 – Plot No. III*
 - 2) *LSC No. 2526/'87 – Plot No. IV*
 - 3) *LSC No. 2527/'87 – Plot No. V*
 - 4) *LSC No. 2538/'87 – Plot No. XIV Lianhmingthangi LSC*
 - 5) *LSC No. 2539/'87 – Plot No. XV Lianhmingthangi LSC**Heng LSC panga (5) te hi Phunchawng Presbyterian Kohhran Biakin Pass No. MISC 72 of 1995 hian a thuah hmak a, a bak Pu lianchungnunga LSC dang hi chu an thuah buailo niin a lang.*
A chung a kan report hi a hmunah a ram neitu aiawh ten nen enho va dik nia kan hriat anga ziah a ni.
A tul anga action lak zui atan Xerox copyu (LSC & MISC Pass) thil telin ka han report e.

I rintlak,

Sd/- (R. ZARZOLIANA)”

As it speaks itself, Land Lease No. Misc. 72 of 1995 was issued in 1995, meanwhile, the following LSCs which were overlapped by the said Land Lease No. Misc. 72 of 1995 were issued in 1987 namely-

1. LSC No. 2525 of 1987- Plot No. III
2. LSC No. 2526 of 1987- Plot No. IV
3. LSC No. 2527 of 1987- Plot No. V
4. LSC No. 2538 of 1987- Plot No. XIV (Lianhmingthangi LSC)
5. LSC No. 2539 of 1987- Plot No. XV (Lianhmingthangi LSC)

As older and senior LSCs of the plaintiffs than the Land Lease No. Misc. 72 of 1995 of the defendant no. 4, the LSCs of the plaintiffs will prevail and precedent over to the Land Lease No. Misc. 72 of 1995 with regards their overlapping.

Issue No. 5

Whether the Land Lease No. Misc. 72 of 1995 is legally and validly issued or not

As the Land Lease No. Misc. 72 of 1995 was issued by overlapping the five LSCs of the plaintiffs undisputedly, it cannot be held as the Land Lease No. Misc. 72 of 1995 was issued legally and validly.

Issue No. 6

Whether the plaintiffs are entitled to the relief claimed. If so, to what extend.

As per the clear and cogent findings reached above, the following reliefs are entitled by the plaintiffs namely-

The plaintiffs are the true owners of the land under LSCs no. AZL. 2523 of 1987 to AZL. 2527 of 1987, LSCs no AZL. 2534 of 1987 to AZL. 2536 of 1987, LSCs no. AZL. 2530 of 1987, AZL. 2537 of 1987, LSC no. AZL. 2531 of 1987, LSCs no. AZL. 2532 of 1987, AZL. 2539 of 1987, LSCs no. AZL. 2533 of 1987 and LSC No. AZL. 2538 of 1987 and deserved free and vacant occupation/possession of the suit land under the following LSCs namely-

1. LSC No. 2525 of 1987- Plot No. III
2. LSC No. 2526 of 1987- Plot No. IV
3. LSC No. 2527 of 1987- Plot No. V
4. LSC No. 2538 of 1987- Plot No. XIV (Lianhmingthangi LSC)
5. LSC No. 2539 of 1987- Plot No. XV (Lianhmingthangi LSC)

The Land Lease No. Misc. 72 of 1995 is deserved to declare as null and void and arbitrarily issued over to the landed properties of the plaintiffs.

The defendant no. 4 is plausibly mandate to direct to vacate the suit land by dismantling any structure which they develop in the suit land.

Meanwhile, as it was the fault of the defendants 1-3 by issuing Land Lease No. Misc. 72 of 1995, there can be no justification to direct the defendant no. 4 to pay rental charges to the plaintiffs on the suit land.

Application of the provisions of the Land Acquisition Act, 1894 is beyond the jurisdiction of this court in the instant case whilst adjudicate to direct the defendants to vacate the suit land for the plaintiffs.

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 plaintiffs are hereby declared as the true owners of the land under LSCs no. AZL. 2523 of 1987 to AZL. 2527 of 1987, LSCs no. AZL. 2534 of 1987 to AZL. 2536 of 1987, LSCs no. AZL. 2530 of 1987, AZL. 2537 of 1987, LSC no. AZL. 2531 of 1987, LSCs no. AZL. 2532 of 1987, AZL. 2539 of 1987, LSCs no. AZL. 2533 of 1987 and LSC No. AZL. 2538 of 1987.
2. The Land Lease No. Misc. 72 of 1995 issued in favour of the defendant no. 4 is also hereby declared as null and void.
3. The defendant no. 4 is directed to vacate the suit land by dismantling any structure which they developed in the suit land within sixty days from the date of this order and further directed to leave the plaintiffs for their free and peaceful possession of the suit land covered by the following LSCs namely-
 - (a) LSC No. 2525 of 1987- Plot No. III
 - (b) LSC No. 2526 of 1987- Plot No. IV
 - (c) LSC No. 2527 of 1987- Plot No. V
 - (d) LSC No. 2538 of 1987- Plot No. XIV (Lianhmingthangi LSC)
 - (e) LSC No. 2539 of 1987- Plot No. XV (Lianhmingthangi LSC)

Due to peculiar character of the case, 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 29th 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/66/2010, Sr. CJ (A)/

Dated Aizawl, the 29th June, 2012

Copy to:

1. Mr. Lianchungnunga S/o Hrangia (L) R/o Chaltlang, Dawrkawn, Aizawl & Ors. through Mr. M. Zothankhuma, Sr. Adv.
2. The State of Mizoram Through the Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
3. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
4. The Collector/Deputy Commissioner- Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
5. The Chairman, Presbyterian Church, Vaivakawn Pastor Bial, Aizawl- Phunchawng Veng through Mr. C. Lalramzauva, Sr. Adv.
6. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
7. Case record

PESKAR