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

C.R.P. NO. 01 OF 2007

Petitioners:

1. Mr. Ramfangzauva
   Chanmari West, Aizawl

2. Mr. Sangliana
   S/o Kawlkhuma
   Saitual Venglai, Saitual

By Advocates : 1. Mr. R.C. Thanga
2.Mr. B. Lalramenga

Versus

Respondents:

1. Mr. H. Thansanga
   Zemabawk, Aizawl

2. Mr. Sikata
   Zemabawk, Aizawl

By Advocates : 1. Mr. C. Lalramzauva, Sr. Adv.
2.Mr. A. Rinliana Malhotra

Date of hearing : 13-03-2012
Date of Judgment & Order : 15-03-2012

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

JUDGMENT AND ORDER

INTRODUCTORY

As per the Notification issued by the Govt. of Mizoram under No. A. 51011/3/06- LJE Dated Aizawl, the 1st Dec., 2011 in pursuance of the resolution adopted by the Hon'ble Administrative Committee of Gauhati High Court dt. 1/11/2011 and in accordance with the later circular issued by the Hon'ble District Judge, Aizawl Judicial District, Aizawl under No. A. 22017/14/2009- DJ (A), Aizawl, the 5th Dec., 2011, case record being pending appellate case in the previous District Council Court, Aizawl is endorsed to me and proceed in this court. These all are the outcome of the

nascent insulation of judiciary from the executives in Mizoram towards meeting globalization era in the very competitive globe where malfunctioning of the government is a *sine quo non* to vanish.

BRIEF STORY

This appeal is directed against the order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 20.03.2003 in Execution Case No. 39 of 2002 arising out of the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 25.01.2001 in Title Suit No. 04 of 1999. Wherein, the learned Magistrate finds that it hard to believe that the plaintiff Mr. H. Thansanga did not bought the whole area of P/Patta No. 21/1982 which covered the upper and lower area of the main road of Aizawl to Lunglei road as claimed by the opposite party when the plaintiff looked after the whole area. The appellant in their memorandum of appeal submitted on the ground that (i) the trial court erred in law in passing the impugned judgment & order Dt. 25.1.2001 as necessary party like the Revenue Department were not arrayed as party and in view of P. Patta No. 21 of 1980, the boundary description is very clear that the land lying above the main road only covered by it and the petitioners were not given an opportunity of being heard in the said impugned judgment & order to defend their rights (ii) in the Execution Order Dt. 20/3/2003, the petitioners who were not arrayed as parties in the main suit and impugned judgment & order were directed to vacate their dwelling area and is therefore liable to set aside.

On the other hand, the respondent no. 1 in his written objection stated that the petitioners have no rights to occupy the suit land and also fails to file an appeal in time whilst the third party can also file an appeal. A copy of the P. Patta No. 21/1980 submitted by the petitioners were fabricated in respect of boundary description. In the main suit, the case was whether the opposite party no. 1 had purchased the suit land from the opposite party no. 2 or not, no need of impleadment of the petitioners in the said suit.

ARGUMENTS

Mr. B. Lalramenga, learned counsel for the petitioners stated that beyond the impugned judgment & order and whilst the petitioners were not impleaded as parties in the main suit, the impugned execution order was travelled which is bad in law taking reliance in the observations of Hon'ble Supreme Court in **Ramaswamy Aiyangar V. Kailasa Thevar**, AIR 1951 SC 189 and the decisions of Hon'ble Gujarat High Court in **Yusubhai Ismailbhai And Anr. Vs. Vakil Mohanial And Ors**. decided on 18th Sept., 1963 reported in AIR 1965 Guj 282 and also the decisions of Hon'ble Delhi High Court in **V.K. Uppal Vs. M/S Akshay International Pvt. Ltd**. decided on 9th Feb., 2010 in Ex. Appl. No. 516 of 2009 in Ex. P. No. 295 of 2003.

On the other hand, Mr. C. Lalramzauva, learned senior counsel for the respondent no. 1 contended that as the P. Patta No. 21/1980 area covers the area occupied by the petitioners and no choice except to direct the petitioners to vacate the suit land as per the impugned judgment & order.

FINDINGS

The instant petition is filed under Rule 32 (2) read with rule 33 (i) of the Lushai Hill Autonomous District (Administration of Justice) Rules, 1953. Under Rule 32 (2) of the said rules, the District Council Court is authorized to call for and examine records of any proceedings of Subordinate District Council Court or its Additional Subordinate District Council Court and Village Court by empowering power to enhance, reduce, cancel or modify any sentence or finding passed by such court or remand the case for re-trial. Under rule 33, towards fair and impartial trial or some question of law or otherwise of unusual difficulty is likely to arise, the District Council Court is authorized to enquire or trial any case by itself or to transfer cases to one Subordinate District Council Court to other Subordinate District Council Court likewise in Village Court.

In the instant case, although challenging the impugned execution order, memorandum of appeal also elicited some irregularities in the proceedings of the main original suit. In the case at hand, without impleadment of the petitioners in the Title Suit No. 4 of 1999, in the execution process, the petitioners were directed to vacate their occupied area whilst In the other arena, right to fair hearing is a guaranteed right and Hon'ble Apex Court lamented in incomplete hearing the case in **State of Uttaranchal & Anr. vs Sunil Kumar Vaish & Ors.** decided on 16 August, 2011 in connection with Civil Appeal No.5374 of 2005, the Supreme Court has held that-

> "15. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based, on mainly events which happened in the past. Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system."

More so, as 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."

Furthermore, in the celebrated case of **Cooper v. Wandsworth Board of Works**, 1963 (143) ER 414, the principle was thus stated:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. 'Adam', says God, 'where art thou' has thou not eaten of the tree whereof I commanded thee that 'thou should not eat'."

Since then the principle has been chiselled, honed and refined, enriching its content. In **Mullooh v. Aberdeen** 1971 (2) All E.R. 1278, it was stated:

> "the right of a man to be heard in his defence is the most elementary protection."

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."

In one angle, the proviso to clause (b) of sub-section (3) of section 1 of the Code of Civil Procedure, 1908 remains unaltered. Rule 48 of the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* for ready reference may be quoted as-

> "48. In civil cases, the procedure of the District Council Court or the Subordinate District Council Court, shall be guided by the spirit, but not bound by the letter, of the Code of Civil Procedure, 1908 in all matters not covered by recognized customary laws or usages of the district"

It may be Pertinent to express the pretext of application of only the spirit of the Code in Mizoram, it would meant that whenever and wherever the provisions of the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953 is silent for proceedings of the lis, the fundamental provisions of the CPC will be applied in the court established/constituted under the Lushai Hills Autonomous District (Administration of Justice) Rules, 1953. Abuse of the process and travelled without basis will be beyond the spirit of the Code. The relevancy is already settled in **Rasiklal Manickchand Dhariwal & Anr. vs M/S M.S.S. Food Products** decided on 25 November, 2011 in connection with Civil Appeal No. 10112 of 2011 (Arising out of SLP (Civil) No. 27180 of 2008), wherein, the Supreme Court has held that-

> "70. The doctrine of proportionality has been expanded in recent times and applied to the areas other than administrative law. However, in our view, its applicability to the adjudicatory process for determination of `civil disputes' governed by the procedure prescribed in the Code is not at all necessary. The Code is comprehensive and exhaustive in respect of the matters provided therein. The parties must abide by the procedure prescribed in the Code and if they fail to do so, they have to suffer the consequences. As a matter of fact, the procedure provided in the Code for trial of the suits is extremely rational, reasonable and elaborate. Fair procedure is its hallmark. The courts of civil judicature also have to adhere to the procedure prescribed in the Code and where the Code is silent about something, the court acts according to justice, equity and good conscience. The discretion conferred upon the court by the Code has to be exercised in conformity with settled judicial principles

> and not in a whimsical or arbitrary or capricious manner. If the trial court commits illegality or irregularity in exercise of its judicial discretion that occasions in failure of justice or results in injustice, such order is always amenable to correction by a higher court in appeal or revision or by a High Court in its supervisory jurisdiction."

Without hearing of the petitioners and also without giving opportunity of being heard by adducing sufficient evidences pertaining to the case, the fundamentals of procedure is obviously violated. Although additional evidence can be taken in the appellate court vide, in **Jayaramdas & Sons Vs. Mirza Rafaullah Baig & Ors**. in connection with Appeal (civil) 1814 of 2004 decided on 23/03/2004 reported in 2004 AIR 3685, 2004 (3) SCR 488, 2004 (10) SCC 507, 2004 (3) SCALE 664, 2004 (5) JT 367: **N. Kamalam (Dead) & Anr. Vs. Ayyasamy & Anr**. in connection with Appeal (civil) 3164-3166 of 1997 decided on 03/08/2001 and reported in 2001 AIR 2802, 2001 (1) Suppl. SCR 272, 2001 (7) SCC 503, 2001 (5) SCALE 65, 2001 (6) JT 219: **K. Venkataramiah Vs. A. Seetharama Reddy & Ors**. decided on 12/02/1963 reported in 1963 AIR 1526, 1964 (2) SCR 35: **Sunderlal & Sons Vs. Bharat handicrafts (P.) Ltd**. decided on 20/09/1967 reported in 1968 AIR 406, 1968 (1) SCR 608, being a Revisional Court and as not suit to cure the maladies in the suit, it is not inclined to take such evidence at this court.

Rather the pavement and slum dwellers cannot also evict without substantive due process of law as held in **Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors. etc.** decided on 10 July, 1985 and reported in 1986 AIR 180, 1985 SCR Supl. (2) 51: **Randhir Singh v. Union of India & Ors**. decided on 22 February, 1982 and reported in (1982) 1 SCC 618, 1982 AIR 879, 1982 SCR (3) 298, I do not find reasons to evict the petitioners from their occupied area without giving opportunity of being heard by impleadment of parties in the original suit.

As relied by learned counsel for the petitioners, the observations of Hon'ble Supreme Court in **Ramaswamy Aiyangar V. Kailasa Thevar**, AIR 1951 SC 189 is relevant saying that-

> "The duty of an executing Court is to give effect to the terms of the decree. It has no power to go beyond its terms. Though it has power to interpret the decree, it cannot make a new decree for the parties under the guise of interpretation".

The decisions of Hon'ble Gujarat High Court in **Yusubhai Ismailbhai And Anr. Vs. Vakil Mohanial And Ors**. decided on 18th Sept., 1963 reported in AIR 1965 Guj 282 is also attracted wherein, it was concluded that-

> "(4) As the executing Court cannot go beyond the decree and cannot question the validity or correctness of the decree, the appeal is dismissed. No order as to costs."

The decisions of Hon'ble Delhi High Court in **V.K. Uppal Vs. M/S Akshay International Pvt. Ltd**. decided on 9th Feb., 2010 in Ex. Appl. No. 516 of 2009 in Ex. P. No. 295 of 2003 will also be relevant, it emphasized that-

> "As aforesaid not only were the Directors not parties to the arbitration proceedings but were not impleaded in the execution petition also..... No case for attaching the properties of the Directors of the judgment debtors is therefore, made out. There is not merit in the application, the same is dismissed"

By taking the ratio of the aforesaid guiding judgments, the impugned execution order Dt. 20.3.2003 in Execution Case No. 39 of 2002 arising out of the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 25.01.2001 in Title Suit No. 04 of 1999 is not sustained in law. More so, the entire proceedings including the impugned judgment & order in Title Suit No. 04 of 1999 Dt. 25.1.2001 also erred in law and is also liable to set aside and quash by virtue of rule 32 of the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* due to non-joinder of necessary parties like the instant petitioners and the State of Mizoram viz. Land Revenue and Settlement Department as cogently, without impleadment of the said instant petitioners and the State of Mizoram viz. Land Revenue and Settlement Department, the execution of the impugned judgment & decree is futile as held 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

> "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."

However, as the State of Mizoram is a juristic person not natural person, the subject matter jurisdiction of the Courts constituted and established under the *Lushai Hills Autonomous District (Administration of Justice) Rules, 1953* will be ousted as held in **Smt. Hmangaihzuali vs Smt. C. Laldingi** decided on 9/9/2003 and reported in AIR 2004 Gau 13. Thus, remand back the case for de novo trial is inappropriate.

ORDER

Due to the aforesaid reasons, I find sufficient grounds to interfere in the lower court proceedings and decisions. The impugned execution order Dt. 20.3.2003 in Execution Case No. 39 of 2002 arising out of the judgment & order passed by learned Magistrate, Subordinate District Council Court, Aizawl dt. 25.01.2001 in Title Suit No. 04 of 1999 and it entire proceedings

and the impugned judgment & order in Title Suit No. 04 of 1999 Dt. 25.1.2001 is hereby set aside and quashed.

Instead of remanding back of the case for re-trial and as held in **Smt. Hmangaihzuali vs Smt. C. Laldingi (supra.)**, parties are at liberty to file a fresh suit for determining their rights and allied in the appropriate court of law having jurisdiction by impleadment of necessary parties. No order as to cost.

Give this copy to all concerned.

With this order, the case shall stand disposed of.

Given under my hand and seal of this court on this 15th March, 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. CRP/1/2007, Sr. CJ (A)/ Dated Aizawl, the 15th March, 2012

Copy to:

1. Mr. Ramfangzauva, Chanmari West, Aizawl through Mr. B. Lalramenga, Adv.
2. Mr. Sangliana S/o Kawlkhuma, Saitual Venglai, Saitual through Mr. B. Lalramenga, Adv.
3. Mr. H. Thansanga, Zemabawk, Aizawl through Mr. C. Lalramzauva, Sr. Adv.
4. Mr. Sikata, Zemabawk, Aizawl
5. P.A. to Hon'ble District Judge, Aizawl Judicial District- Aizawl
6. Pesker to learned Civil Judge-1, Aizawl for kind information and necessary action.
7. Case record

PESKAR