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

CIVIL SUIT NO. 05 OF 2007

Plaintiff:

Mr. Malsawmtluanga
S/o Buaia
Quarter No. 4 (A)
Ramhlun 'N', Aizawl

By Advocates : 1. Mr. Rualkhuma Hmar
2. Mr. Lalawmpuia Ralte

Versus

Defendants:

1. Mr. K. Sanghmingthanga
   S/o Lalthuama
   Durtlang Dawrkawn
   Aizawl, Mizoram

2. Mr. H. Sanglura
   S/o Lalsiama (L)
   Ramhlun, Aizawl- Mizoram

By Advocate's : Mr. Samuel Vanlalhriata

Proforma defendants:

1. The State of Mizoram
   Represented by the Chief Secretary to Govt. of Mizoram

2. The Secretary to the Govt. of Mizoram
   Land Revenue and Settlement Department
   Govt. of Mizoram

3. The Deputy Secretary to the Govt. of Mizoram
   Land Revenue and Settlement Department
   Govt. of Mizoram

4. The Director
   Land Revenue and Settlement Department
   Govt. of Mizoram

5. The Assistant Director
   Land Revenue and Settlement Department
   Govt. of Mizoram

6. The Assistant Settlement Officer-I
   Land Revenue and Settlement Department
   Govt. of Mizoram
   Aizawl District: Aizawl

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

Date of Arguments : 05-03-2012
Date of Judgment & Order : 09-03-2012

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

JUDGMENT & ORDER

GERMINATION OF THE CASE

The plaintiff in the plaint submitted that on 29th Nov., 1976, the Village Council, Durtlang Village had issued Village Council Pass to one Rev. Challiana (L) in respect of a plot of land located at Saisih, Durtlang, it modified the first pass issued on 2nd Feb., 1976 and subsequently altered by the Village Council sitting dt. 27th April, 1976. In 1978, the holder of the said pass was dead and thereby succeed the said pass by his children (i) Mr. Lalchungnunga (ii) Mr. Lalzikpuia (iii) Mr. Rodingliani and (iv) Mrs. Laltanpuii. The defendant no. 1 being a Surveyor and the defendant no. 2 being a Chainman by misusing their position had obtained LSCs 1581/87 and 1587/87 in the suit land. The proforma defendants also suggested to make alternate land to defendants 1 and 2. By executing a sale deed by Mr. Lalzikpuia on 15th May, 2000, the land was transferred to the plaintiff. The plaintiff paid Rs. 30/- of court fees. The plaintiff therefore prays that (i) he is the lawful owner of the land covered by Village Council Pass issued by the Durtlang village council sitting on 2nd Feb., 1976 (and subsequently altered in a village council sitting dt. 27th April, 1976) to Rev. Challiana (L), as the transferee from the successors of the said Rev. Challiana (ii) he has the right of peaceful possession and is entitled to apply for a Land Settlement Certificate over the suit land as per the rules and regulations (iii) the defendants 1 and 2 have no right or claim over the land covered by the Village Council pass whatsoever and the Land Settlement Certificates having been obtained by them over the said land by illegal, improper, inequitable and unjust means, are liable to be set aside and quashed (iv) any other relief which this court deems fit and proper.

The defendant no. 1 in his written statement contended that in the government record, Rev. Challiana or the plaintiff were not recorded as having land at Saisih area. The plaintiff therefore have no cause of action for maintaining the suit. The land alleged allotted by the village council was

Agriculture land within Misc Pass No. 6 of 1965 belonging to Dr. R.K. Nghakliana (L) which itself is contrary to law, the village council were not authorized to allot Agriculture land particularly within the area of the said Misc Pass. Rev. Challiana was died on 20th August, 1992 by leaving three children, Mrs. Laltanpuii is the daughter in law of Rev. Challiana. As gifted to him by Dr. R.K. Nghakliana, he duly obtained LSC in the suit land and also up to date payment of revenue taxes for the same. He thereby prayed to dismiss of the suit.

The proforma defendants in their written statements stated that extract copy of village council sitting minutes dt. 29.11.1976 enclosed in the plaint as Annexure A and B were contradictory to each other. No inheritance certificate on the suit land by the children of the deceased Rev. Challiana was received till date by them. Selling of land without LSC was rather misuse of position. The plaintiff has no right of ownership over the suit land. The mandate of S. 80 of CPC viz. Legal Notice was not made by the plaintiff for filing the suit against the government.

ISSUES

The issues were framed on 4/3/2009 and by virtue of O. XIV, R. 5 of the CPC, the issues were amended and the amended form of issues are as follows -

1. Whether the suit is maintainable or not
2. Whether the plaintiff has cause of action/locus standi to file the suit or not.
3. Whether the village council pass issued to Rev. Challiana (L) was valid or not
4. Whether the LSCs issued to defendant 1 and 2 were over the land claimed by the plaintiff or not.
5. Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiff had produced the following witnesses namely-

1. Mr. Malsawmtluanga S/o Buaia, Ramhlun 'N', Aizawl (Hereinafter referred to as PW-1)
2. Smt. Laltanpuii W/o Lalzikpuia S/o Rev. Challiana, Durtlang Leitan (Hereinafter referred to as PW-2)
3. Smt. Lalsangliani D/o Rev. Challiana (Hereinafter referred to as PW-3)

The **PW-1** in his examination in chief reiterated the gist of his plaint being the plaintiff.

In his cross examination, he deposed that he did not know that whether the village council land pass is transferable or not. He did not know that whether the village council land pass is inheritable or not.

The **PW-2** in his examination in chief deposed that she is the daughter in law of Rev. Challiana (L) and she is of aged about 47 years. In 1976, the land was allotted to her father in law by the village council and eventually altered by a village council sitting in the same year and the boundary was extended. Before the death of her father in law, they came to know the LSCs of the defendants 1 and 2 in the suit land.

In her cross examination, she deposed that she knew that her father in law was died in August, 1992, the area of the land allotted to her father in law was 5 bighas. Even after sold the said village council land pass, it remains in the name of her father in law. She admitted that the said village council land pass was not mutated/converted into LSC.

The **PW-3** in her examination in chief deposed that the land was allotted to her father Rev. Challiana by the village council and eventually altered by a village council sitting in the same year and the boundary was extended. After the dead of her father, it was look after by Mr. Lalzikpuia. Before the death of her father, they came to know the LSCs of the defendants 1 and 2 in the suit land. The plaintiff had purchased the suit land from her youngest brother Mr. Lalzikpuia on 15.5.2000.

In her cross examination, she further deposed that she did not know the area covered by the said village council land pass even after altered by the village council. She did not know whether her younger brother Mr. Lalzikpuia inherited the said village council land pass as per the order of court. She knew the LSCs of defendants 1 and 2 in the suit land before her father deceased.

For the defendant no. 2:

The defendant no. 2 had produced only one witness namely- Mr. H. Sanglura S/o Lalsiama (L), Ramhlun Veng, Aizawl (Hereinafter referred to as DW for defendant no. 2). The **DW for deft. No. 2** in his examination in chief deposed that Dr. R.K. Nghakliana gifted him a potion of land under Misc Pass No. 6 of 1965 and duly converted into LSC in 1987 under LSC No. 1583 of 1987. The village council were not competent to issue land pass for Agricultural land as per the existing land laws.

Declined to cross examine.

For the proforma defendants:

The proforma defendants also produced only one witness namely Mr. K. Lalhmuakliana, Assistant Director, Land Revenue and Settlement Department, Govt. of Mizoram (Hereinafter referred to as DW for proforma defendants). In his examination in chief, he deposed that Ext. D-13 is written statement submitted by proforma defendants, Ext. D-13 (a) is the

signature of the then Under Secretary to Govt. of Mizoram, Revenue Department.

Declined to cross examine.

FINDINGS

Issue No. 1
Whether the suit is maintainable or not

The suit is duly accompanied by affidavit and verification in a proper manner. Meanwhile, court fees at Rs. 30/- only is paid and no proper valuation of the suit for the purpose of court fees and pecuniary jurisdiction of courts. Being civil suit with consequential relief is sought, advolorem court fees as per the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997) is a sine quo non. In this moot point, the Hon'ble Supreme Court in **Bachhaj Nahar vs. Nilima Mandal and Anr** (2008) 17 SCC 491. It is relevant to extract the principles enunciated in para 23 of the judgment which is as follows.

> "23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof."

In short without requisite court fees in the lis, the suit will not cogently maintainable for investigation as well.

With regards to lack of valuation of the suit, elaborations may be made that valuation of the suit is not only for the purpose of paying the Court Fees but it also plays an important role for determining the pecuniary jurisdiction of the Civil Court in the light of S. 15 of the CPC held in the case of **Ratan Sen alias Ratan Lal Vs. Suraj Bhan & Ors**. AIR 1944 All 1. Furthermore, in **Sri Rathnavarmaraja Vs. Smt. Vimla**, AIR 1961 SC 1299, the Supreme Court held that whether proper court fee has been paid or not, is an issue between the plaintiff and the state and that the defendant has no right to question it in any manner. The said judgment of the Apex Court was re-considered and approved in **Shamsher Singh Vs. Rajinder Prashad & Ors.** AIR 1973 SC 2384, observing as under:-

> "The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved"

Also in **Meenaakshisundaram Chettiar v. Venkatachalam Chettiar**, [1979] 3 SCR 385, the Hon'ble Apex Court made the following observation:

> "The plaintiff is required to state the amount at which he values the relief sought. In suits for accounts it is not possible

for the plaintiff to estimate correctly the amount which he may be entitled to for,...."

And in **Shamsher Singh Vs. Rajinder Prashad & Ors**. decided on 03/08/1973 and reported in 1973 AIR 2384, 1974 (1) SCR 322, 1973 (2) SCC 524, it was observed that-

> "There is thus no merit in the preliminary objection. As regards the main question that arises for decision it appears to us that while the court-fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff's suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage the court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for."

With regards to legal notice, the law is also sum up in **Gangappa Gurupadappa Gugwad Gulbarga vs Rachawwa, Widow Of Lochanappa Gugward & Ors.** decided on 23 October, 1970 and reported in 1971 AIR 442, 1971 SCR (2) 691, it was held that-

> "If for instance the plaintiff's cause of action is against a Government and the plaint does not show that notice under section 80 of the Code of Civil- Procedure claiming relief was served in terms of the said section,, it would be the duty of the court to reject the plaint recording an order to that effect with reason for the order. In such a case the court should not embark upon a trial of all the issues involved and such rejection. would not preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action. But, where the plaint on the face of it does not show that any relief envisaged by s. 80 of the Code is being claimed, it would be the duty of the court to go into all the issues which may arise on the pleadings including the question as to whether notice under S. 80 was necessary. If the court decides the various issues raised on the pleadings, it is difficult to see why the adjudication of the rights of the parties, apart from the question as to the applicability of s. 80 of the Code and absence of notice thereunder should not operate as, res judicate in a subsequent suit where the identical questions arise for determination between same parties."

In the instant case, prayer of entitlement of issuance of LSC is one arena where the *lis* against the Government of Mizoram. Although merely put as proforma defendant, prior legal notice in terms of Section 80 of CPC will be necessary. Thus, this issue is decided negative for the plaintiff as lack of requisite court fees, improper valuation of the suit and failure to prior legal notice to state defendants.

Issue No. 2
Whether the plaintiff has cause of action/locus standi to file the suit or not.

Whether the case is fit to examine/further investigate is important as observed in the pronouncements of H.L. Anand, J on 23rd May, 1973 reported at 1973 RLR 542 **Gopal Krishan Kapoor Vs. Ramesh Chander**, Hon'ble Delhi High Court considered several prior judicial pronouncements and observed as follows:-

> "9. The terms "prima facie" and "prima facie case" are not defined in any statute and although no attempt has been made to encase these terms within the confines of a judicially evolved definition or to evolve an inflexible formula for universal application, the terms have been judicially interpreted to mean a case which is not bound to fail on account of any technical defect and needs investigation."

And 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 respect of cause of action, the law 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, their Lordship of 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."

For that purpose, Section 3 of the Lushai Hills District (House Sites) Act, 1953 reads thus-

> **"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."

In this pursuance and may be because of usurpation of their powers, 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.

Further Section 4(1) of the Mizo District (Agricultural Land) Act, 1963 provides "*The Administrator or the Officers authorised by it, in writing, shall have the power to allot any vacant land for the purpose of farm.*"

Section 7(2) of the Mizo District (Agricultural Land) Act, 1963 provides "*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 the provisions of this Act.*"

Well known, the authority of village council on agricultural land is only extended under the Lushai Hills District (Jhuming) Regulation, 1954 for the purpose of distributing only one year time jhuming.

It may also be relevant Entry 45 of Seventh Schedule to the Constitution of India which runs as-

> "45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues."

More so, undisputedly, the village council land Pass is neither inheritable not transferrable as per the existing land laws. Even in the instant case, without Heirship Certificate issued by the competent court, how the offspring of the deceased have a right to look after and manage the claimed land as well as what mode of rights to valid transfer will be there.

Howsoever, although there were numerous annexure in the plaint, all were Xerox copy not compare with original documents, which itself is not admissible in the eye of law as held in the case of **Shalimar Chemicals Works Ltd. vs Surendra Oil & Dal Mills (Refineries) & Ors.** decided on 27 August, 2010 in connection with Civil Appeal No. 52 of 2005, the Supreme Court has held that-

> "12. On a careful consideration of the whole matter, we feel that serious mistakes were committed in the case at all stages. The trial court should not have "marked" as exhibits the Xerox copies of the certificates of registration of trade mark in face of the objection raised by the defendants. It should have declined to take them on record as evidence and left the plaintiff to support its case by whatever means it proposed rather than leaving the issue of admissibility of those copies open and hanging, by marking them as exhibits subject to objection of proof and admissibility The appellant, therefore, had a legitimate grievance in appeal about the way the trial proceeded."

Furthermore, although documents annexed in the plaint were marked as Ext., no exhibited in the court was made as lack of initials/signatures of the Presiding Officer of the court which itself is contrary to law as held by the Hon'ble Supreme Court in **R.V.E. Venkatachala Gounder *v.* Arulmigu Viswesaraswami & V.P. Temple** reported in (2003) 8 SCC 752, at page 763:

> "… In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not

> prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in a superior court."

And in the case of **Narbada Devi Gupta Vs. Birendra Kumar Jaiswal** (2003) 8 SCC 745, where the Supreme Court observed as follows:-

> "The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

Be that as it may, the plaintiff also fails to annex/exhibit the alleged Village Council Pass whether validly issued or not. As contended, the submissions of the plaintiff is arbitrary, capricious on the date and time of death of Rev. Challiana as contradictory with deposition of PW-2 during her cross examination. Under paragraph 3 of the plaint, the plaintiff submitted that Smt. Laltanpuii is the daughter of the deceased Rev. Challian but as deposed clearly by PW-2, she is the daughter in law of the said deceased. Which itself also embarked the case doubtful and incredible.

In another horizon, the suit land was allegedly allotted to the deceased Rev. Challiana in 1976 and again alleged inherited by his offspring while the Lushai Hills District (House Sites) Act, 1953 (Act No. 1 of 1953) and the Mizo District (Land and Revenue) Act, 1956 (Act No. 1 of 1957) were enacted, the plaintiff or the said deceased never sought as seen or obtained valid landed documents from the competent authority.

In the administrative and governance avenue, by 1891, the two newly districts came into existence under Scheduled District Act, 1874. According to this Act of 1874, the territory was declared as **'Scheduled District'**. The Forces sent from Chittagong established a fort at Lunglei and the area they occupied was called South Lushai Hills District under the Bengal province. It was administered by the in-charge of Asst. Superintendent or Sub-Divisional Officer. The force sent from Cachar area established a fort at Aizawl and the area was called the North Lushai Hills District under the province of Assam. It was manned by the Superintendent with one Assistant Superintendent of Police.

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.

When the Independence era of India from the regime of Britishers by making a separate holistic Constitution, the then area was delineated as District Council under the Sixth Schedules to the Constitution of India as part of Assam State. Therefore, inaugurated Mizo District Council on the 25th April, 1952. Later elevated into Union Territory status on 21st January, 1972 under the 'North Eastern Areas (Re-Organisation) Act, 1971' re-christened as Mizoram. By virtue of the Constitution (53rd Amendment) Act, 1986 and the State of Mizoram Act, 1986, Mizoram was conferred full fledged statehood on 20th February, 1987. Whereof, insurgency was broke out in the early 1966 and ceased on 30th June, 1986 when the pride Peace Accord was signed by the then MNF insurgent group and the Govt. of India. But the plaintiff remains blenched to pursue the suit land for obtaining allotment LSC from the competent authority. As admitted, the plaintiff at this stage is applying LSC in respect of the suit land and is yet awaiting the result. I therefore no *locus standi* to lead cause of action in favour of the plaintiff to file the instant suit.

Issue No. 3
Whether the village council pass issued to Rev. Challiana (L) was valid or not

No other findings except the discussions under issue no. 2 can be made. In a nutshell, this issue is also decided in favour of the defendants.

Issue No. 4
Whether the LSCs issued to defendant 1 and 2 were over the land claimed by the plaintiff or not.

No evidence is adduced except to presume that the area covered by the LSCs of defendants 1 and 2 are similar with the claimed land of the plaintiff. No diverse views can be had due to lack of production of evidence in this task.

Issue No. 5
Whether the plaintiff is entitled to the relief claimed or not. If so, to what extend.

Reckoning all the above findings, there can be no reasoned and there can be no grounds to adjudicate the suit in favour of the plaintiff except to dismissal of the suit. Pertinently, although entitlement for issuance of LSC

is sought in the plaint. Whereas, land allotment in the notified town area or city (urban town) and for agriculture purposes and commercial purposes lies in the Land Revenue and Settlement Department, Govt. of Mizoram being a State, I do not find reasons to commit usurpation on the other aegis like Executive and Legislative arena without locus standi for making directions or declaring entitlements etc. meant to avoid arbitrariness taking only one resort that the Supreme Court in **S.G. Jais- inghani v. Union of India and Ors**., [1967] 2 SCR 703, indicated the test of arbitrariness and the pit- falls to be avoided in all State actions to prevent that vice, in a passage as under:

> "In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey--"Law of the Constitution"-Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlick, (*), "when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilker (*), "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

If not, rather *rule of man* than *rule of law* will be eked out as held in the case of **Central Board of Secondary Education Vs. Nikhil Gulati & Anr.** decided on 13/02/1998 and reported in 1998 AIR 1205, 1998 (1) SCR 897, 1998 (3) SCC 5, 1998 (1) SCALE 634, 1998 (1) JT 718.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, as inevitably, the suit is dismissed. Although costs of the suit is mandate as recently observed by the Hon'ble Apex Court in **Ramrameshwari Devi & Ors. vs Nirmala Devi & Ors.** decided on 4 July, 2011 in connection with Civil Appeal Nos. 4912-4913 of 2011 (Arising out of SLP(C) Nos. 3157-3158 of 2011). And also in the case of **Vinod Seth vs Devinder Bajaj & Anr**. disposed of on 5 July, 2010 in connection with Civil Appeal No. 4891 of 2010 [Arising out of SLP [C] No.6736 of 2009], no order as to costs by showing clemency to the plaintiff recognizing his purposeless expenditure for the illegal purchase of the suit land from the wrong person.

In the above terms, the case shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 9th 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. CS/5/2007, Sr. CJ (A)/ Dated Aizawl, the 9th March, 2012

Copy to:

1. Mr. Malsawmtluanga S/o Buaia, Quarter No. 4 (A), Ramhlun 'N', Aizawl through Mr. Rualkhuma Hmar, Adv.
2. Mr. K. Sanghmingthanga S/o Lalthuama, Durtlang Dawrkawn, Aizawl, Mizoram through Mr. Samuel Vanlalhriata, Adv.
3. Mr. H. Sanglura S/o Lalsiama (L), Ramhlun, Aizawl- Mizoram through Mr. Samuel Vanlalhriata, Adv.
4. The State of Mizoram Represented by the Chief Secretary to Govt. of Mizoram through Mr. R. Lalremruata, AGA
5. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
6. The Deputy Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
7. The Director, Land Revenue and Settlement Department, Govt. of Mizoram through Mr. R. Lalremruata, AGA
8. The Assistant Director, Land Revenue and Settlement Department- Govt. of Mizoram through Mr. R. Lalremruata, AGA
9. The Assistant Settlement Officer-I, Land Revenue and Settlement Department, Govt. of Mizoram, Aizawl District: Aizawl through Mr. R. Lalremruata, AGA
10. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
11. Case record

PESKAR