

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

EXECUTION CASE NO. 81 OF 2011
[IN TITLE SUIT NO. 02 (A) OF 1996]

Petitioners:

United Penticostal Church, North East India
Represented by District Superintendent
North Mizoram District, Aizawl

By Advocates : 1. Mr. W. Sam Joseph
2. Mr. F. Lalengliana

Versus

Respondents:

1. Rev. Chhunglawma
District Superintendent
N. Mizoram District
United Penticostal Church
2. Mr. Lalnunmawia
Chairman, Hqrs.
Local Church Board Committee
United Penticostal Church
Tuikhuahtlang- Aizawl
3. Mr. Chalkunga
Chairman
Church Board Committee
United Penticostal Church
Chanmari- Aizawl
4. Mr. Laldawngliana
Chairman
Church Board Committee
United Penticostal Church
Chaltlang- Aizawl

By Advocates : 1. Mr. L.H. Lianhrima
2. Mr. Lalhriatpuia

Proforma defendant:

The Director
Land Revenue and Settlement Department
Govt. of Mizoram

Mizoram- Aizawl

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

Date of Hearing : 06- 03- 2012

Date of Order : 06 -03 -2012

BEFORE

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

ORDER

BRIEF FACTS

This is an execution petition for that (i) to make clarification of the exact boundary line in between the two buildings located within the Misc Pass No. 13 of 1970 as the land was divided and distributed separately. And to clarify the width of the land at the northern side having sizeable compound as five feet space was impossible due to limited are of space (ii) to issue execution order for free and actual possession of the said Pastor Quarter at Bilkhawthlir as per the agreement dt. 26.10.2007 made at the local church level (iii) to provide free and actual possession/opening of the stores below the press building as the same was orally objected by the plaintiffs.

On the other hand, the respondents contended that being executing court, the petition is not tenable to maintain. After executing Possession Certificate in pursuance to the judgment & decree passed by this court dt. 9.8.2011 and 10.8.2011 in the presence of law enforcers who were directed to realize the said judgment & decree, the instant case is not appropriate to proceed further. In the said judgment & decree, the book stall located between the District office under the Press Building and Sunday School office under Misc Pass No. 13 of 1970 were not included. Thus prayed to dismiss of the case with exemplary costs.

To accurate on the rival points, the spot at Tuikhuahtlang, Aizawl was visited on 1/2/2012 in the presence of both parties.

TERMS OF RIVALRY

At the time of hearing, learned counsel for the petitioner submitted that the matter requires to look in this executing court as the judgment & decree passed by this court dt. 9.8.2011 and 10.8.2011 was not clear about the gap/space between the one Pastor Quarter decreed to the respondents and the main office decreed to the petitioner/applicant. There is more space as reflected in the said judgment & decree. Although the matter is left to the proforma defendant for boundary demarcation, it is a sine quo non to clarify

the terminology of “*the elaka permits it and by leaving in the decisions of the proforma defendant*”.

On the other hand, the respondents contended that on the basis of the terms of consensus, the Revenue authorities acted to demarcate the said boundary which is binding to parties.

FINDINGS AND REASONS

In respect of Pastor Quarter at Bilkhawthlir, being executing court, I am not vested to modify or nullity of the unambiguous decree passed therein which reads that-

“The plaintiff no. 1 is declared and decreed as the rightful and legal owner of the Pastor Quarters with the landed properties located at Tuikhuahtlang, Chaltlang, Durtlang, Bukpui, Kawnpui, West Phaileng, Kawrthah with the landed area including other moveable properties located therein. The plaintiff no. 1 is further declared and decreed to entitle the Pastor quarters with the landed properties located at Lengpui, Kolasib, Bilkhawthlir, Vairengte and Dinthar.....”

With regards to provide free and actual possession/opening of the stores below the press building under Misc. Pass No. 13 of 1970 located at Tuikhuahtlang, very clear, except the Pastor Quarter building in the southern side which is having four floors, all other moveable and immovable properties under the said Misc. Pass No. 13 of 1970 located at Tuikhuahtlang was included in the decree in favour of the petitioners/defendants and again not invested the power to re-look the judgment & decree already passed by this court.

With regards to make clarification of the exact boundary line in between the two buildings located within the Misc Pass No. 13 of 1970 as the land was divided and distributed separately. And to clarify the width of the land at the northern side having sizeable compound as five feet space was impossible due to limited are of space. The amendment order dt. 10.08.2011 is certainly absolute it runs as-

“1.The demarcation in the western side shall be done as the elaka permits it and by leaving in the decisions of the proforma defendant.”

Again, it was further ordered that-

“4. The land occupied by the Pastor Quarter of UPC located at Tuikhuahtlang under Misc Pass No. 13 of 1970 in the southern side (Amongst two Pastor Quarter buildings) decreed in favour of the plaintiff no. 1 (UPC of Mizoram) shall be sliced out/partitioned from the area of Misc Pass No. 13 of 1970 as decreed above, the proforma defendant is authorized to admeasure the area for the convenience of both parties for making partition in view of the

area specified in the above decree no. 1. The said proforma defendant is therefore directed to perform this task in time toward avoidance of future rivalry amongst the parties.”

Undisputedly, the proforma defendant was the Director, Land Revenue and Settlement Department, Govt. of Mizoram. Again, I am not invested being executing court to betray the judgment & order already passed by this court itself. As inevitably, the crux is obviously mandate to leave to the respected Director, Land Revenue and Settlement Department, Govt. of Mizoram.

ORDER

UPON hearing of both parties and their respective learned counsels and on the basis of the findings elaborated above, inevitably, the petition and its proceedings is concluded in the following terms-

In respect of Pastor Quarter at Bilkhawthlir, being executing court, I am not vested to modify or nullity of the unambiguous decree passed therein as the afore excerpted.

With regards to provide free and actual possession/opening of the stores below the press building under Misc. Pass No. 13 of 1970 located at Tuikhuahtlang, very clear, except the Pastor Quarter building in the southern side which is having four floors, all other moveable and immovable properties under the said Misc. Pass No. 13 of 1970 located at Tuikhuahtlang was included in the decreed in favour of the petitioners/defendants and again not invested the power to re-examine the judgment & decree already passed by this court. No chance will be permitted due to laches of the plaint in the original suit.

With regards to make clarification of the exact boundary line in between the two buildings located within the Misc Pass No. 13 of 1970 as the land was divided and distributed separately. And to clarify the width of the land at the northern side having sizeable compound as five feet space was impossible due to limited are of space. As I am not invested authority being executing court to re-look the judgment & order already passed by this court itself. As inevitably, ***the crux is left to the respected Director, Land Revenue and Settlement Department, Govt. of Mizoram to survey and examine afresh in terms of the amendment of judgment & decree dt. 10.08.2011 and also to finalise the rivalry*** subject to compliance of *natural justice with reasons* 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."

More so, 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.”

The respected Director, Land Revenue and Settlement Department, Govt. of Mizoram is expected to bear in mind of the above legal notions and principles for carrying out of his onerous task.

With this order, the petition shall stand disposed of.

Give this copy to all concerned.

Given under my hand and seal of this court on this 6th 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. Ex. C/81/2011, Sr. CJ (A)/

Dated Aizawl, the 6th March, 2012

Copy to:

1. United Penticostal Church, North East India, Represented by District Superintendent, North Mizoram District, Aizawl through Mr. W. Sam Joseph, Adv.
2. Rev. Chhunglawma, District Superintendent, N. Mizoram District- United Penticostal Church through Mr. L.H. Lianhrima, Advocate
3. Mr. Lalnunmawia, Chairman, Hqrs., Local Church Board Committee, United Penticostal Church, Tuikhuahtlang- Aizawl through Mr. L.H. Lianhrima, Advocate
4. The Director, Land Revenue and Settlement Department, Govt. of Mizoram, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
5. P.A. to Hon'ble District & Sessions Judge, Aizawl Judicial District- Aizawl
6. Case record

PESKAR