

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

CIVIL SUIT NO. 04 OF 2004

Plaintiffs:

1. Mr. C. Rosanga
S/o Aichana (L)
Chanmari, Aizawl
2. Smt. Tlangkungi
W/o Mr. C. Rosanga
Chanmari, Aizawl

By Advocate's

: Mr. W. Sam Joseph

Versus

Defendants:

1. The State of Mizoram
Through the Chief Secretary to the Govt. of Mizoram
2. The Secretary to the Govt. of Mizoram
Environment and Forest Department
3. The Secretary to the Govt. of Mizoram
Land Revenue and Settlement Department
Mizoram- Aizawl.
4. The Director
Land Revenue & Settlement Department
Govt. of Mizoram, Aizawl.
5. The Deputy Commissioner
Aizawl District, Aizawl.
6. The Principal Chief Conservator of Forests
Govt. of Mizoram
7. The Assistant Settlement Officer -I
Land & Revenue Settlement Department
Aizawl District, Aizawl.
8. The Divisional Forest Officer
Aizawl Forest Division
Aizawl- Mizoram
9. Mr. Chhanzawna

Tuirial
SPO Zemabawk
Aizawl, 796017

10. Mr. Rohlira
Tuirial
SPO Zemabawk
Aizawl, 796017

11. Mr. Liankhama
Tuirial
SPO Zemabawk
Aizawl, 796017

12. Mr. Zorema
Tuirial
SPO Zemabawk
Aizawl, 796017

13. Smt. Zathiangi
Tuirial
SPO Zemabawk
Aizawl, 796017

14. Mr. Lalnunnema
Tuirial
SPO Zemabawk
Aizawl, 796017

15. Smt. Khuangdailovi
Tuirial
SPO Zemabawk
Aizawl, 796017

16. Mr. Rohmingthanga
Tuirial
SPO Zemabawk
Aizawl, 796017

17. Mr. Sakhuma
Tuirial
SPO Zemabawk
Aizawl, 796017

18. Mr. Zahmingthanga
Tuirial
SPO Zemabawk
Aizawl, 796017

19. Mr. K.T. Vunga
Tuirial

SPO Zemabawk
Aizawl, 796017

20. President/Chairman
Zemabawk Village Council/Local Council, Aizawl- 796017

21. President
Tuirial Village Council, Aizawl- 796017

By Advocates :

For the defendant no. 1, 3-5 & 7 : 1. Mr. R. Lalremruata, AGA
2. Miss Bobita Lalhmingmawii, AGA

For the defendant nos. 2,6&8 : Mr. B. Lalramenga

Date of Arguments : 26-09-2012

Date of Judgment & Order : 01-10-2012

BEFORE

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

J U D G M E N T & O R D E R

FACTUAL SCENARIO

The plaintiff's case in brief is that he purchased garden land under Permit No. 2 of 1972 belonging to Mr. Makkhama, Zemabawk issued by the then Mizo District Council with an area of 12 bighas located at Zemabawk Zuksihzawl for a period till 1975. By virtue of section 3 of the Mizoram (Agricultural Land) Act, 1963, the plaintiff no. 1 was again issued Permit No. 32 of 1975 without validity period with an area of 36 bighas in the same location. By virtue of section 3 of the Mizoram (Agricultural Land) Act, 1963, the plaintiff no. 2 was again issued Permit No. 33 of 1975 without validity period with an area of 36 bighas in the same location of Permit No. 2 of 1972. As they were situated within the Forest Plantation area, the said two garden permits were cancelled with immediate effect under Memo No. DSL/GR-19/Z/74/Par/3654-60 Dated Aizawl, the 2nd April, 1975. For challenging the same Civil Suit No. 5 of 1975 was filed by the plaintiffs and during pendency of the said suit, the DFO, Aizawl and his men destroyed all the crops in the suit land. Later Periodic Patta No. 658 of 1977 was issued to the plaintiff no. 1 with an area of 36 bighas in the same plot of land and also issued Periodic Patta No. 659 of 1977 was issued to the plaintiff no. 2 with an area of 36 bighas in the same plot of land, their validity was extended till 31.12.2006. In the year of 2002, the President, Zemabawk Village Council allowed the defendants 9-19 to occupied the suit land. Wherein, the Forest personnel did not make objection to those defendants

on the suit land. Thus prayed that (i) a decree declaring that the defendant 9-19 have no right to stay within some portion of the land covered by Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 and issue direction to vacate the suit land (ii) a decree declaring that the plaintiffs are the rightful owners of the land covered by Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 and entitled to possession and conversion of the same into permanent settlement (iii) a decree declaring that the defendants 6 and 8 and their men destroyed the crops and building mention in the Schedule C of the plaint and they are liable to pay compensation to the plaintiffs at the rate as fixed by the Deputy Commissioner, Aizawl (iv) a decree declaring that the plaintiffs are jointly entitled to get compensation at the rate of Rs. 1,00,000/- per year till the obstruction to develop the lands by the defendants 2, 6 and 8. The amount calculated up to the date of filing of the suit is Rs. 28,00,000/- and a direction be given to the defendants 2,6 and 8 to pay the said sum to the plaintiffs (v) by way of permanent and mandatory injunction the defendants especially the defendants 2, 6 and 8 be restrained from utilising the said land for earning their livelihood (vi) by way of permanent and mandatory injunction of all defendants be restrained from doing any act detrimental to the interest of the plaintiffs (vii) a decree be passed directing the defendants 3,4,5 and 7 to convert Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 into permanent Land Settlement Certificate (viii) any other relief which this court deems fit and proper.

The defendants 2, 6 and 8 in their joint written statements stating that Mr. Makkhama had no title and ownership right over the land covered by Permit No. 2 of 1972 as it falls within the Tuirial Riverine Reserve Forest area as declared by the erstwhile Mizo District Council and inside the forest plantation area, without obtaining no objection certificate from the Forest Department, transfer of the said Permit to the plaintiffs is illegal. The plantation was created by them during 1970 – 1976 with teak species and since then it has been under the possession of them. In respect of the defendants 9-19, the DFO concerned already asked the President, Village Council, Zemabawk to cancel their passes on dt. 10/4/2002. The plaintiffs filed Title Suit No. 7/97 and withheld the same due to obtaining Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 and later approaching this court is without clean hands. Thus, prayed to dismiss of the suit.

The defendants 3,4,5 and 7 in their joint written statement also contended that on verification of the suit land, it falls within the areas of Forest Plantation area. Thus, cancellation order dt. 2/4/1975 is legal and proper. Being a Periodic Patta, it can be cancelled without paying any compensation at all. The plaintiffs filed Title Suit No. 7/97 and withdrawn with liberty to file the same on 9/4/2002 and the suit is therefore barred by law of limitation. Thus, also prayed to dismiss of the suit.

The defendants 9-19 filed their written statements stating that at the time of starting their occupation, none claimed their lands and no development of the land by cultivating any plants/crops were also found. They occupied the suit land on the basis of the pass issued by the Village

Council, Zemabawk.

ISSUES

Issues were framed on 28/5/2007 and amended towards correct findings as follows

1. Whether the suit is maintainable in its present form and style.
2. Whether the suit is barred by law of limitation or not
3. Whether the suit is barred by Res Judicata or not
4. Whether the location of the Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs is within the Tuirial Riverine Reserved area and is within the Forest Plantation area
5. Whether the Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs are validly issued and are liable to direct for conversion into permanent Land Settlement Certificate
6. Whether the plants and crops available in the suit is belonging to the plaintiffs or the defendants 2,6 and 8.
7. Whether the village council passes issued in favour of the defendants 9-19 were liable to declare as null and void.
8. Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

BRIEF ACCOUNT OF EVIDENCE

For the plaintiff:

The plaintiffs had produced the following witnesses namely-

1. Mr. C. Laldinliana S/o C. Rosanga, Chanmari, Aizawl (Hereinafter referred to as PW-1)
2. Mr. C. Thankhuma S/o Lalduha (L), Zemabawk 'N', Aizawl (Hereinafter referred to as PW-2)

The **PW-1** in his examination in chief merely reiterated and affirmed the averments and submissions in his plaint being the Attorney holder of the plaintiffs. He further exhibited the following documents-

- Ext. P- 1 is a copy of Permit No. 2 of 1972
- Ext. P-2 is a copy of letter Dt. 20th Jan., 1975 issued by ASO
- Ext. P-3 is a copy of Permit No. 32 of 1975
- Ext. P-4 is a copy of Permit No. 33 of 1975
- Ext. P-5 is a copy of Order Dt. 2nd April, 1975
- Ext. P-6 is a copy of letter Dt. 3rd April, 1975
- Ext. P-7 is a copy of Periodic Patta No. 658 of 1977
- Ext. P-8 is a copy of Periodic Patta No. 659 of 1977
- Ext. P-9 is legal notice u/s 80 CPC

Ext. P-10 is a copy of order Dt. 9th April, 2002 passed by ADC in Title Suit No. 7t. 25/01/2001

Ext. P- 11 and 12 are copies of Tax clearance certificates
 Ext. P- 13 and 14 are copies of house tax payee certificates
 Ext. P-15 is an Affidavit revealing burning of all original documents
 Ext. P-16 is Power of Attorney executed by the plaintiff no. 1
 Ext. P-17 is also Power of Attorney executed by the plaintiff no. 2

In his cross examination by learned AGA for state defendants, he deposed that the plaintiffs are his parents. He admitted that his father had purchased Permit No. 2 of 1972 from Mr. Makkhama in consideration of Rs. 14,000/-. Crops in the suit land were destroyed by the Forest Department in 1975.

The **PW-2** in his examination in chief deposed that he knew that the plaintiff had purchased Permit No. 2 of 1972 from Mr. Makkhama in 1975 located at Zuksih zawl within the territorial jurisdiction of Zemabawk Village Council, the said Mr. Makkhama (L) was his neighbor and he knows very well. Before the plaintiff no. 1 had purchased the suit land, he used to visit the suit land and found that Mr. Makkhama had planted teak, mango, lemon etc. and also made two fish ponds and terrace. Through his interference, the plaintiff no. 1 had purchased the suit land from Mr. Makkhama in consideration of Rs. 14,000/- in 1975. He also knew that as soon as purchasing the suit land, the plaintiff engaged one Chowkider to look after the suit land.

In his cross examination, he deposed that in his opinion, the garden of late Makkhama would not be less than 24 bighas. He did not know whether the permit of Makkhama (L) was transferable or not

For the defendants:

The defendants had produced the following witnesses namely-

1. Mr. V. Lalfala S/o Dengkhuma (L), Electric Veng, Aizawl (Hereinafter referred to as DW-1)
2. Mr. Lalfela S/o Biaklala (L), Chaltlang, Aizawl (Hereinafter referred to as DW-2)
3. Mr. Rongura Hrahsel, Sairang (Hereinafter referred to as DW-3)
4. Mr. K. Lalhmuakliana, Assistant Director, Land Revenue and Settlement Directorate (Hereinafter referred to as DW-4)

The DW-1 in his examination in chief deposed that he is the DFO, Aizawl Forest Division. Mr. Makkhama have no title and ownership of the suit land under Permit No. 2/72 and such, no legal rights to transfer the same to the plaintiffs. The area covered by Permit No. 2/72 is within Turial Riverine Reserved area as declared by the erstwhile Mizo District Council and inside the forest plantation area, without obtaining no objection certificate from the Forest Department, transfer of the said Permit to the plaintiffs is illegal. Whilst the Permit No. 2/72 was only 12 bighas, the Revenue authorities had no right to issue Permit No. 32/75 and Permit No. 33/75 in favour of the plaintiffs covering an area of 36 bighas. The plantation was created by them during 1970 – 1976 with teak species and

since then it has been under the possession of them. In respect of the defendants 9-19, the DFO concerned already asked the President, Village Council, Zemabawk to cancel their passes on dt. 10/4/2002. Civil Suit No. 5/75 was dismissed by the court on Dt. 26.08.1996. He further exhibited that-

Ext. D-1 is a copy of Notification for Reserved Forest

Ext. D-1 (a) and (b) were continuation of Ext. D-1

Ext. D-2 is a letter Dt. 10.4.2002

In his cross examination, he deposed that Tuirial Riverin Forest Reserve falls within the jurisdiction of Aizawl Forest Division. He never worked in the Aizawl forest Division prior to 5.3.2010. He also admitted that whatever he knows in the instant case is derived from records maintained in the office as well as relevant Acts and Rules. He denied of destruction of crops mentioned in the plaint by their Department.

In his re-examination, he deposed that he knew the location of the suit land and he usually visited the same. When he visited the suit land he saw that no persons were residing within the disputed land.

The **DW-2** in his examination in chief deposed that he presently occupied the post of Range Officer, Aizawl Forest Range. Mr. Makkhama have no title and ownership of the suit land under Permit No. 2/72 and such, no legal rights to transfer the same to the plaintiffs. The area covered by Permit No. 2/72 is within Tuirial Riverine Reserved area as declared by the erstwhile Mizo District Council and inside the forest plantation area, without obtaining no objection certificate from the Forest Department, transfer of the said Permit to the plaintiffs is illegal. Whilst the Permit No. 2/72 was only 12 bighas, the Revenue authorities had no right to issue Permit No. 32/75 and Permit No. 33/75 in favour of the plaintiffs covering an area of 36 bighas. The plantation was created by them during 1970 – 1976 with teak species and since then it has been under the possession of them. In respect of the defendants 9-19, the DFO concerned already asked the President, Village Council, Zemabawk to cancel their passes on dt. 10/4/2002. Civil Suit No. 5/75 was dismissed by the court on Dt. 26.08.1996.

In his cross examination, he admitted that he did not know the location in which the defendants 9-19 occupied land. He never worked in the Aizawl Forest Division before 2006 when posted him as Range Officer. He admitted that Permit No. 32/75 and Permit No. 33/75 were cancelled in their instance.

In his re – examination, he deposed that he visited the disputed land several times although he did not know the exact area covered by the plaintiffs P. Pattas. Due to falling the suit land within Riverine Reserve area, the permits of the plaintiffs were cancelled.

The **PW-3** in his examination in chief deposed that he is presently holding the post of Range Officer, Sairang Forest Range. As directed by the

DFO, Aizawl during posted as Range Officer (Sadar) in 2002, he along with Range Officers of Seling and Aibawk enquired into encroachment of Tuirial Riverine area particularly when they made plantation. They found that the claimed land of the plaintiffs and the land illegally allotted by the Village Council, Zemabawk encroached upon the said plantation area. The land claimed by the plaintiffs were previously covered under Permit No. 32/75 and Permit No. 33/75 which were cancelled by the Director, Land Revenue and Settlement Department under No. DSL/GR 19/Z/74/Par/3654-60 Dt. 2/4/1975. Ext. D-2 is letter Dt. 10/4/2002 sent by the DFO, Aizawl to the VCP, Zemabawk.

In his cross examination, he deposed that he came to know the dispute of the suit land in 2002. He did not know the areas covered by the P. Pattas of the plaintiffs.

The **DW -4** in his examination in chief deposed that on verification of the suit land, it was verified that the suit land was within the areas of the Forest Plantation area and cancellation order was thereby issued on 2/4/1975 as per provision. The Periodic Patta is cancellation by the authority without compensation as per the Mizo District (Agricultural Land) Act, 1963. The Periodic Pattas of the plaintiffs bears no signatures of the authority concerned. The Revenue Department refused to convert the P. Pattas of the plaintiffs as also doubtful of the same due to no signatures of the issuing authority. Ext. D- 3 is their written statement, Ext. D-4 is the signature of the then their Under Secretary.

In his cross examination, he deposed that he joined Revenue Department since March, 2009 till date. He admitted that as per condition no. 6 in Permit, compensation is mandate for acquiring the land. He have nothing to say about the occupation of defendants 9-19 over to the suit land.

ARGUMENTS

Mr. W. Sam Joseph, learned counsel for the plaintiffs stood that without cancellation of P. Patta, no extenuation of the same can be made. On the other hand, Mr. B. Lalramenga, learned counsel for the Forest Department vehemently argued that in view of the provisions under section 3 of the Mizo District (Agricultural Land) Act, 1963, the said Act has no application to the suit land as it is Riverine Reserved area. More so, by virtue of the rigour provisions of section 2 of the Forest (Conservation) Act, 1980, the plaintiffs including defendants 9-19 have no grounds to interfere on the suit land without prior approval of the Central Government. Mr. B. Lalramenga further contended that in respect of defendants 9-19, as per Ext. D-2, action was taken on 10th April, 2002 by the then DFO, Aizawl to cancel their passes.

FINDINGS

Issue No. 1

Whether the suit is maintainable in its present form and style or not

Ad valorem court fees at Rs. 5000/- is paid with the plaint in terms of the Court Fees (Mizoram Amendment) Act, 1996 (Act No. 5 of 1997). Ext. P-9 also reveals that legal notice as mandate u/s 80 of CPC was also duly served to the defendants state agencies. The plaint was supported by verification but not supported by affidavit. In this lacunae, the provisions of sub- rule (4) of rule 15 under Order VI of the CPC was made effective before institution of the instant suit viz. with effect from 1-7-2002 by Act No. 46 of 1999. For that lacunae, The Constitution Bench of the Supreme Court in **State of Bombay v. Purushottam Jog Naik**, AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

"We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed."

The Constitution Bench of the Supreme Court again in **A. K. K. Nambiar v. Union of India and another**, AIR 1970 SC 652, held as follows:

"The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

More so, recently in **Sinnamani & Anr. vs G. Vettivel & Ors.** decided on 9th May, 2012 in connection with Civil Appeal No. 4368 of 2012 @ SLP (Civil) No.11825 of 2008, Hon'ble Supreme Court has held that-

"11. A suit can be instituted by presentation of a plaint and Order IV and VII C.P.C. deals with the presentation of the

plaint and the contents of the plaint. Chapter I of the Civil Rules of Practice deals with the form of a plaint. When the statutory provision clearly says as to how the suit has to be instituted, it can be instituted only in that manner alone, and no other manner.”

Thus, a plaint without supporting verification and affidavit by a paragraph wise is irregularities which can vitiate the proceedings like in the instant case.

Issue No. 2

Whether the suit is barred by law of limitation or not

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.

However, as per the order passed by the then ADC, Aizawl in Title Suit No. 7 of 1997 Dt. 9.4.2002, the plaintiff was allowed to withdraw the suit with a liberty to file a fresh suit in the same cause of action although later mechanically embarked dismissal order as marked as Ext. P-10. Meanwhile, the instant suit is filed on 2/3/2004. It clearly indicates that the instant suit is filed within a stipulated period of time.

Issue No. 3

Whether the suit is barred by Res Judicata or not

As per the order passed by the then ADC, Aizawl in Title Suit No. 7 of 1997 Dt. 9.4.2002, the plaintiff was allowed to withdraw the suit with a liberty to file a fresh suit in the same cause of action although later mechanically embarked dismissal order as marked as Ext. P-10, the ratio of the said order is very cogent that for filing fresh suit, the plaintiff was allowed to withdraw the case and no question of res judicata can be raised in the instant case as it was disposed without merits.

Issue No. 4

Whether the location of the Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs is within the Tuirial Riverine Reserved area and is within the Forest Plantation area

At the time of oral arguments, there was no dispute that the location of the Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs is within the Tuirial Riverine Reserved area. The then Mizo District Council under their Notification Dt. 26th Jan., 1965 in terms of sections 14 and 21 of the Mizo District (Forest) Act, 1955 declared

as Council Reserved Forest with effect from notification issued on 16th April, 1956 viz. “Forests within half a mile on either side of the following rivers

- (a) Tlawng (Daleswari)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j) Tuirial

The PW- 2 disclosed about plantation of the some crops and plants in the suit land by the previous owner namely Mr. Makkhama. Meanwhile, the DWs 1-3 in their depositions also claimed that being a Tuirial Riverine Reserved area, it was their plantation area as Environment and Forest Department, Govt. of Mizoram. In this catena, as the said Tuirial Riverine Reserved area was declared with effect from 16th April, 1956, no claim can be preferred by the plaintiffs on the plants available in the suit land either by virtue of Permit No. 2 of 1972 or other later Permits and P. Pattas.

Issue No. 5

Whether the Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs are validly issued and are liable to direct for conversion into permanent Land Settlement Certificate

The submission of Mr. B. Lalramenga, learned counsel for the Forest Department is correct, to fructify the same, the provision of section 3 of the Mizo District (Agricultural Land) Act, 1963 is relevant to examine which reads thus-

“3. Application of the Act:

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

- (a) **Land included in the State Forest Reserve.**
- (b) The soil of all Government and Public roads.
- (c) All lands in the Station Reserves of Aizawl, Lunglei, Sairang, Demagiri, Champhai, North Vanlaiphai or any other area or areas as may be notified from time to time, by the Government of Mizoram.

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

“7. Rights over Land:-

- (1) The Patta-holder shall have heritable and transferrable right of use on, or of sub-letting in his land subject to:-
 - (a) The payment of all revenues and taxes from time to time, legally assessed or imposed in respect of the land
 - (b) Such terms and conditions as are imposed by rules made under this Act.
- (2) No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied, unless registered and Patta obtained in accordance with provisions of this Act.”

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

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

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

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

If any arrear of land revenue with additional charge cannot be recovered by attachment and sale of property or land of the defaulter, or if the holder of Periodic Patta, Patta or Periodic Patta for Fishery violates any terms of his Patta, such Patta may be cancelled by the Executive Committee after giving him opportunity to defend himself.”

In another angle, Permit No. 2 of 1972 belonging to Mr. Makkhama, Zemabawk was issued by the then Mizo District Council with an area of 12 bighas located at Zemabawk Zuksihzawl for a period till 1975. By virtue of section 3 of the Mizoram (Agricultural Land) Act, 1963, the plaintiff no. 1 was again issued Permit No. 32 of 1975 without validity period with an area of 36 bighas in the same location. By virtue of section 3 of the Mizoram (Agricultural Land) Act, 1963, the plaintiff no. 2 was again issued Permit No. 33 of 1975 without validity period with an area of 36 bighas in the same location of Permit No. 2 of 1972 both the said Permits no. 32 and 33 were eke out from the previous Permit No. 2 of 1972. If it be so, whilst Permit No. 2 of 1972 covers an area of 12 bighas, conversion into 72 bighas by virtue of Permit Nos. 32 and 33 of 1975 is arbitrary and capricious as deposed by DWs.

Howsoever, Permit Nos. 32 and 33 of 1975 as marked as Ext. P-3 and 4 were issued by virtue of section 3 of the Mizoram (Agricultural Land) Act,

1963 whilst the said section curbed application of the said Act over to State Forest Reserve like the instant Tuirial Riverine Reserved area.

Undisputedly, Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 belonging to the plaintiffs were originated from Permit No. 2 of 1972 marked as Ext. P-1 which covers 12 bighas only but the said two P. Patta covers 72 bighas is also doubtful and not sustainable in law. Periodic Patta No. 658 of 1977 was issued to the plaintiff no. 1 with an area of 36 bighas in the same plot of land and also issued Periodic Patta No. 659 of 1977 was issued to the plaintiff no. 2 with an area of 36 bighas in the same plot of land, their validity was extended till 31.12.2006. Although Mr. W. Sam Joseph, learned counsel for the plaintiffs submitted that only because of that the matter is subjudice, their further extension is pending in the Revenue Department. In this catena, the DW-4 being represented from the Revenue Department stated that as Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 were doubtful, the Revenue Department refused to convert into LSC. As marked as Ext. P-7 and Ext. P-8, the facet of Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 was without the signature of the issuing authority. How to hold its validity without authority is the moot point.

It is relevant to note the observations in the case of **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** decided on 5 September, 2011 in connection with Civil Appeal No. 2047 of 2007, the Supreme Court has held that-

“14. It is well settled that the user of the land is to be decided by the authority empowered to take such a decision and this Court in exercise of its power of judicial review would not interfere with the same unless the change in the user is found to be arbitrary.”

So is the well settled law, the crux on direction to conversion of both P. Pattas into LSC will be answered in **Smt. K. Thansiami Vs. State of Mizoram & Ors** decided on 14th June, 2012 in connection with C.R.P (Art. 227) No. 4 of 2012, Hon'ble Gauhati High Court, Aizawl Bench has held that-

“6. The learned trial Court, however, by the order dated 09-12-2011 rejected the review petition by reiterating the earlier view that it is the discretion of the revenue authorities to take a decision regarding conversion of the periodic patta to LSC.

14. The learned trial Court while disposing the civil suit held that the issue regarding conversion of periodic patta into LSC should be left to the discretion of the revenue authorities. It is true that while passing the aforesaid order, the periodic patta of the plaintiff which was before the Court was the one which had validity upto 31-12-2005. However, the learned trial Court did not base his decision entirely on the said periodic patta which was before the Court.

When the fresh copy of the periodic patta No. 82/1980 having validity up to 31-12-2011 was placed before the learned Court below, it was still held that the matter regarding conversion of the periodic patta into LSC should be decided by the revenue authorities.

15. The above decision of the learned Court below is a decision on merit and was not influenced by the presence of the periodic patta having validity up to 31-12-2005 or by the subsequent one having validity up to 31-12-2011. Even if the latter document is placed before the Court and considered, in the opinion of the Court, it would not have any material bearing on the final outcome as already reached by the learned Court below

..... 17. In view of the aforesaid, I find no merit in this petition and the same is accordingly dismissed”

In a nutshell, by taking the ratio laid down in **Mig Cricket Club vs Abhinav Sahakar Edn. Society & Ors.** (supra.), it is not this court to consider conversion of Periodic Patta No. 658 of 1977 and Periodic Patta No. 659 of 1977 into LSC unless some arbitrary act is committed by the Revenue Department like in the instant case.

In another sense, whilst the suit land is within the Tuirial Riverine Reserve area is already admitted by virtue of the rigour provisions of section 2 of the Forest (Conservation) Act, 1980, the Revenue Department, Govt. of Mizoram may also not be competent to intrude on the suit land without prior approval of the Central Government for non-forest purpose or de-reservation by giving allotment to the plaintiffs.

Issue No. 6

Whether the plants and crops available in the suit is belonging to the plaintiffs or the defendants 2,6 and 8.

This issue is already decided under issue no. 4 in the following terms that “The PW- 2 disclosed about plantation of the some crops and plants in the suit land by the previous owner namely Mr. Makkhama. Meanwhile, the DWs 1-3 in their depositions also claimed that being a Tuirial Riverine Reserved area, it was their plantation area as Environment and Forest Department, Govt. of Mizoram. In this catena, as the said Tuirial Riverine Reserved area was declared with effect from 16th April, 1956, no claim can be preferred by the plaintiffs on the plants available in the suit land either by virtue of Permit No. 2 of 1972 or other later Permits and P. Pattas”

Although the plaintiffs also claimed the suit land stating that the state defendants commit discrimination by not taking any action against the said defendants 9-19, this ground is not tenable in view of Ext. D-2.

Issue No. 7

Whether the village council passes issued in favour of the defendants 9-19 were liable to declare as null and void.

In the plaint, the plaintiffs submitted that in the year of 2002, the President, Zemabawk Village Council allowed the defendants 9-19 to occupy the suit land which is also admitted by the defendants 9-19 in their respective written statements. The action taken by the DFO, Aizawl Dt. 10th April, 2002 against the defendants 9-19 is also already discussed on the basis of Ext. D-2 to null and void their passes.

By taking reliance in the existing land laws 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.

Needless to discuss further by holding that the village council passes issued in favour of the defendants 9-19 over to the suit land were liable to declare as null and void as void ab initio without any legal basis.

Issue No. 8

Whether the plaintiff is entitled to the reliefs claimed or not. If so, to what extend.

To overcome all the above impediments like irregularities in the form of plaint, no legal grounds in favour of the plaintiffs to prefer a claim like in the instant plaint mentioned in the beginning of this judgment body as discussed and elaborated in the afore various issues, the law already well settled in **Manish Goel Vs. Rohini Goel**, reported in AIR 2010 SC 1099 precluded to adjudicate this case in favour of the plaintiffs, wherein, Hon'ble Supreme Court after placing reliance on large number of its earlier judgments held as under :-

"No Court has competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been enjoined by law."

And in the case of **State Of West Bengal vs Subhas Kumar Chatterjee & Ors.** decided on 17 August, 2010 in connection with Civil Appeal No. 5538 of 2008, the Supreme Court has observed that-

“No court can issue Mandamus directing the authorities to act in contravention of the rules as it would amount to compelling the authorities to violate law. Such directions may result in destruction of rule of law.”

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, it was observed thus-

“Occasional aberrations such as these, whereby ineligible students are permitted, under court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add to it further, the courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretions by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on *principle and precept*, it should better desist from passing such orders, for it puts the ‘Rule of Law’ to a mockery, and promotes rather the ‘Rule of Man’.”

The crux in the instant case is answered by the above ratio laid down by Hon’ble Apex Court where judicial interference is not demand and is not appropriate.

ORDER

UPON hearing of parties and on the basis of the afore findings in various issues, due to lack of merits and maintainability, it is hereby ORDERED that the suit is dismissed but no order as to costs.

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 1st October, 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/4/2004, Sr. CJ (A)/

Dated Aizawl, the 1st Oct., 2012

Copy to:

1. Mr. C. Laldinliana S/o C. Rosanga, Chanmari, Aizawl through Mr. W. Sam Joseph, Adv.
2. The State of Mizoram Through the Chief Secretary to the Govt. of Mizoram through Mr. R. Lalremruata, AGA
3. The Secretary to the Govt. of Mizoram, Environment and Forest Department through Mr. B. Lalramenga, Adv.
4. The Secretary to the Govt. of Mizoram, Land Revenue and Settlement Department, Mizoram- Aizawl through Mr. R. Lalremruata, AGA
5. The Director, Land Revenue & Settlement Department, Govt. of Mizoram, Aizawl through Mr. R. Lalremruata, AGA
6. The Deputy Commissioner, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
7. The Principal Chief Conservator of Forests, Govt. of Mizoram through Mr. B. Lalramenga, Adv.
8. The Assistant Settlement Officer –I, Land & Revenue Settlement Department, Aizawl District, Aizawl through Mr. R. Lalremruata, AGA
9. The Divisional Forest Officer, Aizawl Forest Division, Aizawl- Mizoram through Mr. B. Lalramenga, Adv.
10. Mr. Chhanzawna, Tuirial, SPO Zemabawk, Aizawl, 796017
11. Mr. Rohlira, Tuirial, SPO Zemabawk, Aizawl, 796017
12. Mr. Liankhama, Tuirial, SPO Zemabawk, Aizawl, 796017
13. Mr. Zorema, Tuirial, SPO Zemabawk, Aizawl, 796017
14. Smt. Zathiangi, Tuirial, SPO Zemabawk, Aizawl, 796017
15. Mr. Lalnunnema, Tuirial, SPO Zemabawk, Aizawl, 796017
16. Smt. Khuangdailovi, Tuirial, SPO Zemabawk, Aizawl, 796017
17. Mr. Rohmingthanga, Tuirial, SPO Zemabawk, Aizawl, 796017
18. Mr. Sakhuma, Tuirial, SPO Zemabawk, Aizawl, 796017
19. Mr. Zahmingthanga, Tuirial, SPO Zemabawk, Aizawl, 796017
20. Mr. K.T. Vunga, Tuirial, SPO Zemabawk, Aizawl, 796017
21. President/Chairman, Zemabawk Village Council/Local Council, Aizawl- 796017
22. President, Tuirial Village Council, Aizawl- 796017
23. P.A to Hon'ble District Judge, Aizawl Judicial District- Aizawl
24. Case record

PESKAR