

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

MISC. J. NO. 307 OF 2012

[Arising out of Civil Suit No. 87 of 2012]

Petitioners/ Plaintiffs:

Mr. C. Hrangluaia
S/o Hniardailova
Bethlehem Vengthlang, Aizawl

By Advocate's : Mr. Francis Vanlalzuala

Versus

Respondents/ Defendants:

1. Mr. K. Lalremruata
S/o R. Thankhuma
Bethlehem Vengthlang, Aizawl

2. Mr. Vanthanga
S/o Dokhuma
Bethlehem Vengthlang, Aizawl

3. The President
Local Council
Bethlehem Vengthlang, Aizawl

By Advocate's : Mr. Lalremtlunga

Proforma defendant:

The Director
Land Revenue and Settlement Department
Govt. of Mizoram

By Advocates : 1. Miss Bobita Lalhmingmawii, AGA
2. Mr. Joseph Lalfakawma, AGA

BEFORE

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

Date of hearing : 18-10-2012

Date of Order : 18-10-2012

ORDER

BRIEF FACTS AND SUBMISSIONS

The plaintiff/petitioner claimed that the defendants 2 and 3 intruded under his LSC No. 104302/01/167 of 2009 by moving to construct foot path step without his permission and consent. Thus, prayed to restrain them permanently not to commit any intrusion in his suit land and also prayed interim injunction so as to avoid futile proceedings. The application is duly stamped.

At the time of hearing of the petition, learned counsels of both parties admitted that the respondents/defendants inclined to move into the land of the plaintiff covered by LSC No. 104302/01/167 of 2009 in the pretext of public interest for constructing foot path step. Meanwhile, Mr. Lalremthuanga, learned counsel for the defendants/respondents contended that the plaintiff/petitioner committed inclusion of the proposed foot path step area in his LSC in contradiction of the sale agreement from the previous owner of the said LSC which is arbitrary and is not fit for further prosecution of the main case due to lack of prima facie case.

Before going on merits, I must look into the legality of temporary/interim injunction by taking resorts in **Midnapore Peoples' Co-op. Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors.** in connection with Appeal (civil) 1727 of 2002 decided on 25/05/2006 reported in 2006 AIR 2190, 2006 (2) Suppl. SCR 986, 2006 (5) SCC 399, 2006 (6) SCALE 308, 2006 (11) JT 203, the Supreme Court has held that-

“16. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

- (i) Orders which finally decide a question or issue in controversy in the main case.
- (ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
- (iii) Orders which finally decide a collateral issue or question which is not the subject matter of the main case.
- (iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
- (v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.”

Also vide, **Premji Ratansey Vs. Union of India** decided on 22/07/1994 reported in 1994 (2) Suppl. SCR 117, 1994 (5) SCC 547, 1994 (3) SCALE 562, 1994 (6) JT 585: **Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd.** decided on 18/08/1999 reported in 1999 AIR 3105, 1999 (1) Suppl. SCR 560, 1999 (7) SCC 1, 1999 (5) SCALE 95, 1999 (6) JT 89: **Hindustan Petroleum Corporation Ltd. Vs. Sri. Sriman Narayan &**

Anr. in connection with Appeal (civil) 3661-62 of 2002 decided on 09/07/2002 reported in 2002 AIR 2598, 2002 (5) SCC 760, 2002 (5) SCALE 132, 2002 (5) JT 335.

FINDINGS

Upon perusal of material circumstances available with the case records and on hearing of learned counsel for the applicant, the following findings on the basis of the aforementioned well settled ingredients/legal principles emerged as -

Prima facie case

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 recently 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 the light of the above well settled legal principles, Mr. Francis Vanlalzuala, learned counsel for the applicant submitted that the said construction is speedily process by destroying the retaining wall of his land by showing the relevant photographs as well as that the proposed construction is within the delineated LSC No. 104302/01/167 of 2009 belonging to the petitioner/plaintiff. Thus, the case is certainly fit for further investigation by taking prudent evidences in the case at hand.

Balance of convenience

Balance of convenience will be determined by further proceedings of the petition. However, very cogent that balance of convenience lies in favour of the applicant as he is solely the victim as the proposed construction will detriment his interest.

Irreparable injury

As the said Civil Suit No. 87 of 2012 is accepted to proceed whilst the main crux is a matter challenging the ongoing step construction which is claimed within the suit land under LSC No. 104302/01/167 of 2009, without putting the same for keep in abeyance, the whole proceedings of the suit will be futile and non est.

In a nutshell, all the ingredients for temporary injunction is in favour of the plaintiff/applicant which is cogently mandate to grant so as to fructify the main suit judiciously.

ORDER

So is the factual matrix and legal principles, without taking prudence for an interim measures during pendency of the main suit, the whole gamut of the suit will be futile, the defendants/respondents 2 and 3 are hereby directed not to continue the construction work under LSC No. 104302/01/167 of 2009 henceforth till disposal of the instant application otherwise, the whole proceedings of the suit will be futile and purposeless.

The Officer in Charge, Aizawl Police Station, Aizawl is again kindly directed to ventilate his aegis to close look the enforcement of this order and is further expected to bring the culprit if any into justice.

With this order, the petition shall stand disposed of.

Give this order copy to all concerned.

Dr. H.T.C. LALRINCHHANA

Senior Civil Judge - 1
Aizawl District: Aizawl

Memo No. Misc. J/307/2012, Sr. CJ (A)/

Dated Aizawl, the 18th Oct., 2012

Copy to:

1. Mr. C. Hrangluaia S/o Hniardailova, Bethlehem Vengthlang, Aizawl through Mr. Francis Vanlalzuala, Adv.
2. Mr. K. Lalremruata S/o R. Thankhuma, Bethlehem Vengthlang, Aizawl through Mr. Lalremthuanga, Adv.

3. Mr. Vanthanga S/o Dokhuma, Bethlehem Vengthlang, Aizawl through Mr. Lalremthuanga, Adv.
4. The President, Local Council, Bethlehem Vengthlang, Aizawl through Mr. Lalremthuanga, Adv.
5. The Director, Land Revenue and Settlement Department- Govt. of Mizoram through Miss Bobita Lalhmingmawii, AGA
6. The Officer in Charge, Aizawl Police Station, Aizawl through Mr. Francis Vanlalzuala, Adv.
7. P.A. to Hon'ble District Judge, Aizawl Judicial District, Aizawl
8. Case record.

PESKAR