

IN THE COURT OF CIVIL JUDGE

AIZAWL JUDICIAL DISTRICT

AIZAWL, MIZORAM

Civil Suit No. 127 of 2010

Shri. JC Sengluaia
S/o Thangkanglova (L)
R/o Electric Veng, Aizawl
Aizawl District, Mizoram

.... Plaintiff

-Versus-

1. Smt. Ramdinsangi
D/o Saithangpuii Sailo
R/o Tuikual North, Aizawl
Aizawl District, Mizoram
2. Shri. Zothansanga
S/o Saithangpuii Sailo
R/o Tuikual North, Aizawl
Aizawl District, Mizoram
3. The State of Mizoram
Represented by
The Chief Secretary to the Government of Mizoram
4. The Secretary to the Government of Mizoram
Revenue Department
Government of Mizoram
5. The Director
Land Revenue & Settlement
Government of Mizoram
Aizawl, Mizoram
6. The Assistant Settlement Officer
Land Revenue & Settlement
Government of Mizoram
Aizawl, Mizoram

.... Defendants

No. of Total Pages of Judgment & Order: 32 (Thirty two)

BEFORE

H. LALDUHSANGA Civil Judge –II Aizawl

Counsel for Plaintiff : Shri. B Lalramenga & ors, Advocate
Counsel for Defendant No 1 & 2 : Shri. R Laltanpuia & ors, Advocate
Counsel for Defendant No 3 to 6 : Smt. Lalrinpuii, Additional GA
Suit filed on : 27.07.2010
Issues framed on : 07.12.2011
Written Argument on : 04.12.2017, 23.03.2018, 18.05.2018
Oral Argument on : 30.05.2018
Judgment pronounced on : 04.06.2018
Judgment & order delivered on : 04.06.2018

INDEX

LIST OF PLAINTIFF'S WITNESSES

1. PW 1: Shri. JC Sengluaia
2. PW 2: Shri. Lalrema Kawlni
3. PW 3: Shri. Lalthianghlina
4. PW 4: Shri. R Tlanga

PLAINTIFF'S ANNEXURES & EXHIBITS

1. Ext P 1 : Plaintiff
2. Ext P 1 (a) and P 1 (b): Signatures of Plaintiff
3. Ext P 2 : House Pass No. 82 of 1972 issued in favour of Plaintiff by Village Council, Zemabawk, Aizawl (It is not the original issued by the said VCP but re-issued and objected and denied by Ld Counsel for the Defendants)
4. Ext P 2 (a) : Signature of Plaintiff witness No 4 Shri. R Tlanga denied and objected by Ld Counsel for Defendant No 1 and 2
5. Ext P 3 : LSC No. AZL 1891 of 1986 issued by Land Revenue & Settlement in favour of Plaintiff
6. Ext P 3 (a), (b), (c), (d), (e), (f) and (g) are supporting documents of Ext P 3.
7. Ext P 4 : LSC of Defendant No 1 Smt. Ramdinsangi
8. Ext P 5 : LSC of Defendant No 2 Shri. Zothansanga
9. Ext P 6 : Letter Dt. 07.06.2010 sent by Plaintiff to Defendant No 5
10. Ext P 7 : Detailment Order Dt. 08.06.2010
11. Ext P 8 : Show Cause Notice Dt. 13.07.2010
12. Ext P 9 : Show Cause Reply Dt. 22.07.2010
13. Ext P 10 : Tax Payment receipt in respect of Plaintiff's LSC
14. Ext P 11 : Hriattirna Dt. 11.05.1981 issued by DC, Aizawl
15. Ext P 12 : Letter issued by Plaintiff's witness No 2 Shri. Lalrema Kawlni
16. Ext P 12 (a) : Signature of Plaintiff's witness No 2 Shri. Lalrema Kawlni
17. Ext P 13 : Letter issued by Plaintiff's witness No 4 Shri. R Tlanga
18. Ext P 13 (a) : Signature of Plaintiff's witness No 4 Shri. R Tlanga
19. Ext P 14 : Copy of Zemabawk Village Council Sitting Meeting Minute 38/1972 denied and objected by Counsel for Defendant No 1 and 2.
20. Ext P 14 (a) : Signature of Plaintiff's witness Shri. Lalthianghlina

LIST OF DEFENDANT No 1 and 2's WITNESSES

1. DW 1: Smt. Ramdinsangi
2. DW 2: Smt. Saithangpuii
3. DW 3: Shri. H Thanzauva

LIST OF DEFENDANT No 3 TO 6 WITNESSES

1. DW 1: Smt. Martin Lalhlupuii
2. DW 2: Shri. Lalrinzuala
3. DW 3: Shri. Rinzamlova

DEFENDANT No 1 and 2 ANNEXURES & EXHIBITS

1. Ext D 1 : Copy of Notification Dt.09.06.1960 issued by the CEM, Mizo District Council
2. Ext D 2 : Copy of Letter Dt. 10.12.2001 issued by EE (C), 21C for Commander
3. Ext D 3 : Copy of Letter Dt. 10.06.2002 issued by the Under Secretary to the Government of Mizoram, Revenue Department
4. Ext D 4 : Copy of LSC No. 103201/01/604 of 2002 issued to Defendant No 2
5. Ext D 5 : Copy of LSC No. 103201/01/605 of 2002 issued to Defendant No 1
6. Ext D 6 : Copy of Heirship Certificate Dt. 14.03.2000
7. Ext D 7 : Copy of Permit No. 190 of 1974 issued to Shri. Liantudaia
8. Ext D 8 : Copy of Permit No. 191 of 1974 issued to Shri. Liantudaia
9. Ext D 9 : Written statement by Defendants No 3 to 6
10. Ext D 9 (a) : Signature of Shri K. Sangthuama, the then Under Secretary, LR&S Department.
11. Ext D 10 : Notification Dt. 9th June 1960 vide memo No. Ed.7.14444-57.
(Exhibit D 1, D 2 and D 3 are objected by the Plaintiff's Counsel on the ground that DW 1 did not produce original copies).

JUDGMENT & ORDER

Dated 04.06.2018

1. This is a Civil Suit No. 127 of 2010 filed by the Plaintiff against the Defendants on 27.07.2010 for cancellation of the Land Settlement Certificate No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002 issued in the name of Defendant No 1 and 2 respectively and for upholding of the Plaintiff's LSC No. AZL - 1891 of 1986 and for declaring that the LSCs of the Defendant No 1 and 2 encroached upon the land of the Plaintiff and that the Plaintiff's LSC No. AZL- 1891 of 1986 is genuine and valid. Also prayed for the issuance of a permanent and mandatory injunction against the Defendants restraining them from selling, disposing, alienating, altering and developing of the land covered by the Plaintiff's LSC No. AZL - 1891 of 1986 and restraining the Defendants No 3 - 6 from cancellation of the Plaintiff's LSC No. AZL – 1891 of 1986 or from doing

anything detrimental to the said Plaintiff's land and his LSC during the pendency of the instant suit.

2. The Plaintiff in his *Plaint* submits that the Plaintiff is having a plot of land located at Zemabawk, Aizawl, Mizoram which measured an area of 0.24 Bigha/320.63 sqm covered under LSC No. AZL - 1891 of 1986. The Plaintiff's land was originally allotted by the Village Council of Zemabawk on 03.05.1972 by issuing House Pass No. 82 under The Lushai Hills District (House Sites) Act, 1953 whereby the Village Council was empowered to allot land for House Sites. Right after the site was allotted to the Plaintiff by the Zemabawk Village Council, the Plaintiff had been looking after and maintaining his said land and applied for conversion of his Village Council House Pass into LSC to the Defendant Land Revenue & Settlement. Then, after following the necessary procedures, the Land Revenue & Settlement Department converted the Plaintiff's House Pass into LSC No. AZL - 1891 of 1986. The Plaintiff has regularly been paying Revenue taxes till date for the aforesaid land since it was given to him. While the Plaintiff was tending his said plot of land sometime in the month of June 2010, he came to know that his land was overlapped by the LSCs issued in the names of the Defendant No 1 and 2 by the Land Revenue & Settlement Department, Aizawl i.e LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002. As a result, the Plaintiff submitted an application before the Defendant No 5 and prayed the Defendant No 5 to cancel the aforesaid LSCs as his land covered under LSC No. AZL - 1891 of 1986 was overlapped. Thereafter, Defendant No 6 issued a Detailment Order on 8.6.2010 vide Memo No. R. 21011/100/03-DC (A)/59 whereby a Surveyor and a Chainman from the Land Revenue & Settlement Department were appointed to conduct spot verification against the Plaintiff's land which the Defendants had also claimed to be their lands. Accordingly, spot verification was conducted. Thereafter, to his utter surprise, the Plaintiff received a Show Cause Notice Dt. 13.07.2010 vide Memo No. R. 21011/100/03-DC (A)/76-77 from the Defendant No 6 whereby it was mentioned that the Plaintiff's LSC was about to be cancelled and the Plaintiff was asked to make Show Cause Reply within 15 days from the date of issuance of the said Notice to show cause as to why his LSC No. AZL - 1891 of 1986 should not be cancelled. The Plaintiff replied the Show Cause Notice Dt. 13.07.2010 on 22.07.2010. The Plaintiff was aggrieved by the Defendant No 6's Show Cause

Notice which spoke about the Land Revenue & Settlement Department's intention to cancel his LSC No. AZL - 1891 of 1896 and uphold the LSCs of the Defendant No 1 and 2 despite the application made by the Plaintiff to the Defendant No 5 for cancellation of the Defendants' LSCs. As the Plaintiff's application submitted to the Defendant No 5 after discerning the fact of overlapping of his land under LSC No. AZL - 1891 of 1986 by the LSCs issued in the names of the Defendant No 1 and 2 was turned down and since the Plaintiff was about to be given the reverse of what he had applied by the Defendants Land Revenue & Settlement, the Plaintiff had no other alternative but to approach this Court to put justice into it's course.

3. The Plaintiff further submitted that the Plaintiff's land covered under LSC No. AZL - 1891 of 1986 which was originally allotted to him by the Zemabawk Village Council as per law vide House Pass No. 82 of 1972 would not have been allotted to him by the Zemabawk Village Council if the plot of land was not vacant at the time of allotment to the Plaintiff. Similarly, the conversion of the Plaintiff's House Pass No. 82 of 1972 into LSC No. AZL - 1891 of 1986 by the Land Revenue & Settlement Department after complying with all necessary steps and procedures clearly proved the genuineness and legality of the allotment of the Plaintiff's land and the Plaintiff's hereditary and transferable rights over his said plot of land. Furthermore, levying of Revenue taxes from the Plaintiff in respect of his said plot of land till date revealed the fact that the Defendant-State Government also approved the authenticity and validity of the Plaintiff's land. As such, the Plaintiff's LSC No. AZL - 1891 of 1986 could not be cancelled without payment of adequate amount of compensation as per law to the Plaintiff. It could be seen from the Defendant No 6's Detailment Order Dt. 08.06.2010 and from his Show Cause Notice Dt. 13.07.2010 that the Land Revenue & Settlement Department also found from their Office Records that the allotment of the land to the Plaintiff was done as per law. They admitted the fact that the allotments of the site to the Plaintiff vide House Pass No. 82 of 1972 was recorded in the Record Book of Zemabawk Village Council. The intention of the Land Revenue & Settlement Department to cancel the Plaintiff's LSC No. AZL - 1891 of 1986 and to uphold the LSCs issued in the names of the Defendant No 1 and 2 while the Plaintiff's LSC was senior to their LSCs was unsustainable and untenable in law. The Defendant No 6 in his Show Cause Notice Dt. 13.07.2010 mentioned that the

LSCs issued in the names of the Defendant No 1 and 2 are originated from Shri. Liantudaia's Garden Permit No. 682 of 1963. According to him, it was due to the seniority of Shri. Liantudaia's Garden Permit No. 682 of 1963 to the Plaintiff's House Pass No. 82 of 1972 that the LSCs issued in the names of the Defendant No 1 and 2 were to be upheld and the Plaintiff's LSC needed to be cancelled. In this regard, the Plaintiff humbly contended that there was no such law in this regard and the same had been made up by the Defendant No 6 to show and give favouritism towards the Defendant No 1 and 2 which was biased and prejudicial to the Plaintiff. The so called origin of the LSCs issued in the names of the Defendant No 1 and 2 i.e Garden Permit No. 682 of 1963 was doubtful. As such, the issuance of LSC No. 103201/01/605 of 2002 and LSC No. 102301/01/604 of 2002 to the Defendant No 1 and 2 respectively was very questionable inasmuch as the same were issued subsequent to the issuance of the Plaintiff's LSC No. AZL - 1891 of 1986. The LSCs issued to the Defendant No 1 and 2 were converted from House Passes which were in their names and were originated directly into House Passes from the said Shri. Liantudaia's Garden Permit No. 682 of 1963. In this regard, it was to be noted here that since a Garden Permit which could be given by the Defendant-Government for agricultural purpose had not conferred transferable and heritable rights over the land to the Pass/Permit holder. The direct conversion of the said Shri. Liantudaia's Garden Permit No. 682 of 1963 into House Pass or LSC in the name of other person could not have legal stand or validity. Moreover, the said Garden Permit could not be inherited by anyone as the Permit had not conferred heritable rights to the Pass/Permit holder. Further, it was also to be mentioned here that the Defendant-State Government through the Deputy Commissioner, Aizawl District, Aizawl issued a "*Hriattirna*" (Notification) on 11.05.1981 vide Memo No. DCR/21-E/77/77 whereby all Passes/Permits given for the purpose of terrace, gardens etc should be compulsorily converted into Periodic Patta. Despite this Notification, the said Shri. Liantudaia's Garden Permit No. 682 of 1963 (which was prior to the Notification) was not converted into Periodic Patta. As such, the validity and legality of the said Garden Permit No. 682 of 1963 was dubious and questionable in the eye of the law. The Plaintiff's land which had been allotted to him and made into an LSC as per law could not be cancelled by the Defendant-State Government except by acquisition on payment of such amount of compensation payable under the existing law. The Plaintiff had no violation of rules made by

the Defendant-State Government in respect of maintaining his land under LSC No. AZL - 1891 of 1986 and his ownership over the land since the allotment of the land to him till date. The LCSs issued to the Defendant No 1 and 2 respectively had to be cancelled by the Defendant-State Government as they were junior to the Plaintiff's LSC for the reasons stated in the above and for any other reasons. The Plaintiff prayed for issuance of mandatory and permanent injunction against the Defendants (especially Defendant No 1 and 2), restraining them from selling, disposing, alienating, altering and developing of the land covered by the Plaintiff's LSC No. AZL - 1891 of 1986 and for restraining the Defendants No 3 - 6 from cancellation of the Plaintiff's LSC No. AZL - 1891 of 1986 or from doing anything detrimental to the said Plaintiff's land and his LSC during the pendency of the instant suit. The Plaintiff was applying for the copies of some documents which could be relevant for the instant case and he had been waiting for procurement of the documents from the concerned Department. However, since the instant suit had to be fled in an urgent manner so as to restrain the Defendant-State Government from cancellation of the Plaintiff's LSC No. 1891 of 1986, the Plaintiff could not annex some relevant documents to the present Plaint. As such, he craved for leave of the Court to allow him to submit additional plaint/documents accordingly as necessary in a later stage within time permissible under law. The cause of action arose in Aizawl when the House Passes and the LSCs of the Defendant No 1 and 2 were issued and also when the Defendant No 6 issued Show Cause Notice on 13.07.2010 and the same cause of action was subsisting till date.

4. In *written statement*, the Defendant No 1 and 2 submitted that they denied that the Plaintiff had a plot of land at Zemabawk, Aizawl covering an area of 0.24 Bigha (320.63 Sq.m). Also, denied that the LSC No. AZL - 1891 of 1986 was a valid LSC. The Defendant No 1 and 2 also denied that House Pass No. 82 Dt. 3.5.1972 was issued by the Village Council of Zemabawk, Aizawl in favour of the Plaintiff and its genuineness was also denied. They denied that the Plaintiff looked after and maintained the land in question and also denied that the procedure prescribed by law was complied with before issuance of the LSC No. AZL - 1891 of 1986. It was also specifically denied that the Government of Mizoram approved allotment of land in favour of the Plaintiff and that the conversion of House Pass No. 82 Dt. 3.5.1972 into LSC No. AZL - 1891 of 1986

was valid. The Defendant No 1 and 2 also denied that receipt of Land Revenue/Taxes by the Revenue authorities validated the LSC No. AZL - 1891 of 1986. Further denied that the Village Council of Zemabawk was competent to issue the alleged House Pass No. 82 Dated. 3.5.1972. Again, denied that the Plaintiff had ever looked after the suit land and stated that Shri. H Thanzauva was in physical possession of the land since 10.12.2001 when the land was handed over to him. The land was possessed by the Defendant No 1 and 2 ever since House Pass No. 550 of 2002 and House Pass No. 551 of 2002 were issued in their favour. These House Passes were then converted into LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002. The Defendant No 1 and 2 submitted that a piece and parcel of land including the suit land was allotted in favour of Shri. Liantudaia (L) by the then Mizo District Council vide Permit No. 682 of 1963. This Permit No. 682 of 1963 of Shri. Liantudaia was converted into Permit No. 190 of 1974. The entire land of Shri. Liantudaia was forcibly occupied by the BRTF. Shri. H Thanzauva, the son and legal heir of Shri. Liantudaia (L) filed applications to the authorities of the BRTF and the Revenue Authorities for handing over the land to him. Accordingly, the land covered by Permit No. 190 of 1974 was handed over to Shri. H Thanzauva by the BRTF on 10.12.2001. The Government of Mizoram thereafter accorded approval for conversion of the said Permit No. 190 of 1974 into 10 House Sites. The land of the answering Defendants are 2 amongst 10 House Sites i.e LSC No. 103201/01/604 of 2002 issued in favour of Shri. Zothansanga and LSC No. 103201/01/605 of 2002 issued in favour of Smt. Ramdinsangi. The Defendant No 1 and 2 also stated that the Village Council of Zemabawk was not competent to issue House Pass No. 82 Dated. 3.5.1972 in view of the Notification Dated. 9.6.1960 issued by the Mizo District Council. The Defendant No 1 and 2 further stated that House Pass No. 82 Dated. 3.5.1972 allegedly issued by Shri. Masthanga and Shri. R. Tlanga was fictitious as these individuals were not holding any post during the relevant period. The suit land was not a vacant land in the year 1972 inasmuch as Garden Permit No. 682 of 1963 was already issued in respect of land including the suit land in favour of Shri. Liantudaia. It was denied that the LSC No. AZL - 1891 of 1986 was validly and legally issued because of the fact that the LSC was issued without the approval of the Government of Mizoram. It was denied that receiving of Land revenue/Tax authenticated or validated the LSC No. AZL - 1891 of 1986. Regarding the

Plaintiff's allegation that his LSC was senior to the Defendant No 1 and 2's LSCs had been rightly explained in the Show Cause Notice Dt. 13.07.2010 served upon him by Defendant No 6. The Plaintiff's allegation was a misconception inasmuch as the suit land was not a vacant land when the House Pass No. 82 Dated. 3.5.1972 was allegedly issued. The Defendants submitted that title over the suit land devolved upon them from Garden Permit No. 682 of 1963 issued in favour of Shri. Liantudaia which was subsequently converted into Permit No. 190 of 1974. The suit land was not vacant in the years 1972 and 1986 when the VC Pass and the LSC were allegedly issued in favour of the Plaintiff. It was denied that the Garden Permit of Shri. Liantudaia did not confer heritable and transferable right. The Notification Dated. 11.05.1981 was irrelevant unless the right holder had knowledge of its existence. The Defendant No 1 and 2 submitted that the rules were not relevant to the Plaintiff since the LSC allegedly issued in his name was void *ab initio*. It was also denied that he did not have any ownership right in respect of the land. The Defendants submitted that the LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002 issued in favour of Defendant No 1 and 2 were converted from Permit No. 190 of 1974 issued in favour of Shri. Liantudaia. The Plaintiff was not entitled to relief of injunction sought for. The Plaintiff was not entitled to file any documents later inasmuch as details of such documents were not mentioned in the plaint.

5. The Defendant No 3 - 6 also in *written statement* submitted that the suit was not maintainable in its present form and style. There was no cause of action in favour of the Plaintiff against the answering Defendants and that the suit was bad for non-compliance to Section 80 CPC by the Plaintiff. From Report of the spot verification of the suit land, the LSCs of the Plaintiff and the Defendants were found overlapping to each other. The original documents were thoroughly verified from the Office Record and found that the Plaintiff's VC Pass was junior to that of the Garden Permit No. 682 of 1963 from which the Defendant No 1 and 2's LSCs were made as per prescribed procedures. Hence, the Defendant No 1 and 2's LSCs were granted as they were senior. The allotment of the suit land to the Plaintiff vide House Pass No. 82 of 1972 was recorded in the Record Book of Zemabawk VC. However, the LSCs of the Defendant No 1 and 2 are originated from Shri. Liantudaia's Garden Pass which was already issued by the Revenue Department way back in the year 1963. The concerned Department only came to

know of the position of the case when the complaints were received from both parties. The Village Council, Zemabawk could not issue a House Pass without prior permission of the then Executive Committee of the erstwhile Mizo District Council vide Memo No. Ed.7.1444-57, Dated. 9.6.1960. The Plaintiff's LSC was liable for cancellation due to the fact that it was allotted by the VC Zemabawk by overlapping the Garden Permit No. 682 of 1963 issued in favour of Shri. Liantudaia. The LCSs of Defendant No 1 and 2 were issued with the approval of the Government while the Plaintiff's LSC was directly issued without the approval of the Government which was against the existing Rules. The Plaintiff's LSC was originally issued as House Pass by the then VC of Zemabawk and the same could not be issued without the prior permission of the then Executive Committee of the erstwhile Mizo District Council vide Memo No. Ed.7.1444-57, Dated. 9.6.1960. Therefore, the LSC of the Plaintiff was null and void in the eye of law and the same should be rejected.

6. In *Replication*, under Order VII, Rule 9 CPC, 1908 to the written statement filed by the Defendant No 1 and 2, the Plaintiff denied the statements made by the Defendant No 1 and 2 in their written statement *inter alia* that the Plaintiff had never looked after the suit land. The Land Revenue & Settlement Department including the Assistant Settlement Officer – I failed to see the factual position that the LCSs of the Defendant No 1 and 2 cropped up from the House Pass No. 551 of 2002 and House Pass No. 550 of 2002 respectively and the said two House Passes were originated from the Permit No. 190 of 1974 issued in the name of Shri. H Thanzauva. In this regard, the concerned authorities of the Land Revenue & Settlement, Aizawl overlooked the fact that there was no evidence or record to show that Shri. H Thanzauva's Permit No. 190 of 1974 came from Shri. Liantudaia's Garden Permit No. 682 of 1963. Hence, it could not be sustained in the eye of Law. Mere saying that the said Garden Permit No. 682 of 1963 was converted into Permit No. 190 of 1974 without any basis or record could not be sustained in the eye of law. The Garden Permit in any manner did not confer a transferable or inheritable right to the Permit-Holder. Moreover, Shri. Liantudaia (L) had no other issue except his daughter namely Smt. Lawmi and this fact had been substantiated by the document issued by Shri. Lalrema Colney, President of the Zemabawk North Village Council, Aizawl. Hence, inasmuch as there was no document or record that the LCSs of the Defendant No 1 and 2 had actually

originated from Shri. Liantudaia's Garden Permit No. 682 of 1963 and as the Defendant No 1 and 2 as well as the Assistant Settlement Officer – I, Aizawl could not produce the document to prove the conversion of Garden Permit No. 682 of 1963 into Permit No. 190 of 1974, it was crystal clear that the Plaintiff was having a better title over his land covered by LSC No. AZL - 1891 of 1986 (which was originated from the VC Pass No. 82 of 1972) than the Defendant No 1 and 2 who are the holders of the LSC No. 103201/01/605 of 2002 and the LSC No. 103201/01/604 of 2002 respectively. The Plaintiff also stated that there was no record or documentary evidence to show that the then Mizo District Council issued Garden Permit No. 682 of 1963 to Shri. Liantudaia and the Defendant No 1 and 2 could not produce the said Permit. There was no record or documentary evidence to show that Garden Permit No. 682 of 1963 was converted into Permit No. 190 of 1974. When the Defendant No 1 and 2 stated in paragraph No 11 of their written statement that the entire land of Shri. Liantudaia (L) was occupied by the BRTF and the said entire land was handed over to Shri. Thanzauva by the Government of Mizoram, the Assistant Settlement Officer - I in his Show Cause Notice Dated. 13.07.2010 stated that only some portion of the land covered by late Shri. Liantudaia's Garden Permit was acquired by the BRTF and the remaining portion of the land was bifurcated and allotted to the relatives of Shri. Liantudaia (L). Moreover, when the ASO – I stated that the said land of Shri. Liantudaia (L) was acquired by the BRTF in the year 2001, the Defendant No 1 and 2 also stated that the same land was handed over to Shri. H Thanzauva by the Government of Mizoram from the hands of BRTF in the year 2001 i.e the same year when the land was acquired by the BRTF. It was illegal on the part of the Government of Mizoram to accord approval for conversion of the Permit No. 190 of 1974 into ten House sites inasmuch as the two House sites of the Defendant No 1 and 2 which were thereafter converted into their said LSCs fell within the area of the Plaintiff's land covered under LSC No. AZL - 1891 of 1986 which was not vacant at the time of the allotment of House sites by the Government of Mizoram in favour of the Defendant No 1 and 2. The Notification Dated. 09.06.1960 allegedly issued by the then Mizo District Council spoke about the authority of the Village Council of Zemabawk to allot House sites with the prior approval of the Executive Committee. The VC Pass No. 82 of 1972 issued by the Village Council of Zemabawk in favour of the Plaintiff was done as per law which could be seen from the Meeting Minute Dated. 25.02.1972 of the Village

Council of Zemabawk. The allotment of House site by the Village Council of Zemabawk had not been questioned or challenged from any quarter and also even by the Executive Committee which revealed the fact that allotment of the House site to the Plaintiff in the year 1972 was not inconsistent with the said Notification Dated. 09.06.1960 and the same did not speak about restriction on the allotment of sites by the Village Council. The Plaintiff's Village Council Pass No. 82 Dated. 03.05.1972 was issued by the Village Council of Zemabawk in the year 1972 as per law i.e., under the Lushai Hills District (House Sites) Act, 1953. This could be seen from the extract copy of the Meeting Minute of the said Village Council which was procured by the Plaintiff. The Plaintiff inadvertently lost the original copy of the said VC Pass No. 82 Dated. 03.05.1972 and asked the Village Council of Zemabawk to re-issue the Pass. Hence, in the year 1986, a fresh Pass (exactly the same in area, Pass number etc.) which was annexed to the Plaint was issued to the Plaintiff by Shri. R Tlanga and Shri. Masthanga the then the President and the Secretary of Zemabawk Village Council respectively. There was no fabrication in issuance of the Plaintiff's Village Council House Pass No. 82 Dated. 03.05.1972. In this regard, Shri. R Tlanga issued a Letter Dated. 08.06.2011 which explained about the re-issuance of the Plaintiff's Village Council House Pass No. 82 Dated. 03.05.1972 and the said letter spoke *per se*. The Plaintiff also stated that the Defendant No 1 and 2 as well as the State Defendants had no ground to claim or say that the LSCs of the Defendant No 1 and 2 had originated from Shri. Liantudaia's Garden Permit No. 682 of 1963 and this Garden Permit No. 682 of 1963 was nowhere to be seen. Therefore, the LSCs of the Defendant No 1 and 2 which were issued to encroach upon the land of the Plaintiff had to be cancelled immediately.

7. In *Rejoinder*, the Defendant No 1 and 2 submitted *inter alia* the LSC No. AZL - 1891 of 1986 was invalid and void *ab initio*. The Plaintiff attached only a duplicate copy of his LSC to his Plaint. No right was vested upon the Plaintiff by a mere duplicate LSC. No approval was given by the Executive Committee for issuance of the Plaintiff's House Pass No. 82 Dated. 03.05.1972. Shri C. Kamlova, ASO - I, Land Revenue & Settlement Department in his personal capacity and without approval of the Government of Mizoram in violation of the provisions of Rule 3 of the Mizo District (Land and Revenue) Rules, 1967 issued the LSC No. AZL - 1891 of 1986 to the Plaintiff. It was also issued illegally due to official

influence of the Plaintiff. The Plaintiff's LSC No. AZL - 1891 of 1986 was illegally issued without proper verification as the area was within the land covered by Permit No. 190 of 1974 converted from Garden Permit No. 682 of 1963 belonged to Shri. Liantudaia (L). The entire area was under the occupation of the BRTF during the year 1986 till it was handed over to Shri. Thanzauva. It was not a vacant land in that years. No survey, measurement and demarcation could be conducted during the year 1986 when the LSC No. AZL - 1891 of 1986 was issued. The Plaintiff's LSC was issued in violation of Section 10 of the Mizo District (Land and Revenue) Act, 1956 and Rule 6 of the Mizo District (Land and Revenue) Rules, 1967. The Plaintiff had never been in possession of the land till date as the land was in continuous occupation of the BRTF by the time the LSC No. AZL - 1891 of 1986 was illegally issued till date. The BRTF vacated the land in 2001 and handed over it to Shri. H Thanzauva who subsequently handed over to Defendant No 1 and 2. Despite claiming ownership, the Plaintiff had been sleeping over his rights since 1972 when the VC Pass was allegedly issued to him and also from 1986 when the LSC was issued in his favour. The suit for Title was barred by Limitation. The Mizo District Council issued Garden Permit No. 682 of 1963 to Shri. Liantudaia (L) including the suit land. Subsequently, a road was constructed within the said land thereby dividing the Garden Permit into Permit No. 190 of 1974 and Permit No. 191 of 1974. It could be seen from these two Permits that these two Permits superseded the said Garden Permit. As the said Garden Permit had been submitted to the Authorities, copy of the same was not with the Permit Holder. The Defendant No 1 and 2 also stated that the Garden Permit issued to Shri. Liantudaia (L) was heritable and transferrable. The Garden Permit No. 682 of 1963 was legally issued to Shri. Liantudaia (L) and later converted into Permit No. 190 of 1974 and Permit No. 191 of 1974. The said Permit No. 190 of 1974 was converted into House Pass No. 550 of 2002 and House Pass No. 551 of 2002. Again, these two House Passes were converted into LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002 and issued to Defendant No 2 and Defendant No 1 respectively. On the other hand, the VC Pass No. 82 of 1972 was illegally issued to the Plaintiff and overlapped the said Garden Permit No. 682 of 1963.

8. The Ld. Predecessor Court had framed the following *Issues* on 07.12.2011.

- 1) Whether the suit is not maintainable in its present form and style?

- 2) Whether the suit is barred by Limitation?
- 3) Whether the suit is properly valued or not?
- 4) Whether there is any cause of action in favour of the Plaintiff?
- 5) Whether the House Pass No. 82 Dated. 3.5.1972 is valid or not?
- 6) Whether LSC No. AZL - 1891 of 1986 is valid or not?
- 7) Whether the validity of the Plaintiff's Village Council Pass No. 82 of 1972 can be challenged at this belated stage on the ground that the same was issued without prior permission of the Executive Committee of the erstwhile Mizo District Council vide Notification No. ED.7/1444-57 Dated. 9.6.1960 while the Plaintiff's Village Council Pass No. 82 of 1972 has not been questioned in any manner by the Mizo District Council or any other person since the date of its issuance till it was converted into LSC No. AZL - 1891 of 1986 and also whether the Annexure 8 to the Plaint (Show Cause Notice Dated. 13.7.2010) issued by the Defendant No 6 approved the genuineness of the said Plaintiff's Village Council Pass? If not, whether the Plaintiff's title and ownership over the land covered under LSC No. AZL - 1891 of 1986 and the authenticity of the LSC No. AZL - 1891 of 1986 are to be upheld?
- 8) Whether the holder of the Garden Permit has a transferable and heritable right (excluding the right of use of the land) over the land covered by the Garden Permit under Land laws in Mizoram. If not, whether the word "Properties" mentioned in Heirship Certificate Memo No. SDCC/H.C-134/2000/605-7 Dated 14.3.2000 as the properties of Shri. Liantudaia (L) can include the Permit No. 190 of 1974 and whether Shri. H Thanzauva can inherit the land covered under Permit No. 190 of 1974?
- 9) Whether the original area of the land covered under Permit No. 682 of 1963 in the name of Shri. Liantudaia (L) was modified and altered when it was bifurcated into two plots and when fresh Permits Nos. 190 of 1974 and 191 of 1974 were issued for the same. If so, whether it will be correct and right to consider the question of overlapping to each other of the Plaintiff's LSC No. AZL - 1891 of 1986 and the Defendant No 1 and 2's LSC No. 103201/01/605 of 2002 and 103201/01/604 of 2002 basis of the original area of Garden Permit No. 682 of 1963?
- 10) Whether the Plaintiff's LSC No. AZL - 1891 of 1986 originated directly from the Plaintiff's Village Council Pass No. 82 of 1972 without any mutation of

the Village Council Pass No. 82 of 1972 in the area and boundary before its mutation into LSC No. AZL - 1891 of 1986?

- 11) Whether it would be right for the Defendants Land Revenue & Settlement Department to consider the factual position that the Plaintiff's LSC No. AZL - 1891 of 1986 came directly from his Village Council Pass No. 82 of 1972 whereas the Defendants No 1 and 2 LSCs No. 103201/01/605 of 2002 and 103201/01/604 of 2002 came from the House Passes No. 550 of 2002 and 551 of 2002 (i.e House Passes originated from late Shri. Liantudaia's Permit No. 190 of 1974) and that the said Permit No. 190 of 1974 originated from Garden Permit No. 682 of 1963 after bifurcation of Garden Permit No. 682 of 1963 into two portions due to the construction of road within the land covered by Garden Permit No. 682 of 1963 and after the area of the said Garden Permit No. 682 of 1963 had been mutated and decreased? If yes, whether the discussion and observation of the Defendant No. 6 in his Show Cause Notice Dated. 13.7.2010 (Annexure - 8 to the Plaint) should be denied and quashed?
- 12) Considering the loss of its originality in area and boundary by Shri. Liantudaia (L)'s Garden Permit No. 682 of 1963 when the same was converted into 2 Permits No. 190 of 1974 and 191 of 1974, whether the stand of the Plaintiff that his LSC No. AZL - 1891 of 1986 is encroached by the Defendants' LSC could be right. If the Plaintiff's stand is right and to be maintained, whether the LSCs of the Defendant No 1 and 2 are to be liable to be cancelled.
- 13) Whether the impugned Show Cause Notice Dated. 13.7.2010 (Annexure - 8 to the Plaint) is liable to be set aside and dismissed.
- 14) Whether the Plaintiff entitled to the reliefs claimed by him?

DECISIONS AND REASONS THEREOF

9. I have heard the rival submissions made by the Ld. Counsels for the Parties and received written arguments. I have also given my thoughtful consideration.
10. Issue No 1, 2, 3 and 4:
 - *Issue No 1: Whether the suit is not maintainable in its present form and style?*
 - *Issue No 2: Whether the suit is barred by Limitation?*
 - *Issue No 3: Whether the suit is properly valued or not?*

- *Issue No 4: Whether there is any cause of action in favour of the Plaintiff ?*

11. For the sake of brevity, the above four Issues are considered together. In fact, the Ld. Predecessor Court had held the present suit maintainable and no further travel is required.

12. *Issue No 5: Whether House Pass No. 82 of 1972 Dated. 3.5.1972 is valid or not?.*

The Ld. Counsel for Defendant No 1 and 2 and the Ld. AGA strongly argued that House Pass No. 82 of 1972 Dated. 3.5.1972 was issued in violation of Law. Before issuance, no prior permission or previous approval of Mizo District Council, Executive Committee which was mandatory was not taken. Further argued that the photocopy of the alleged Meeting Minutes of the Meeting of the Zemabawk VC furnished to this Court by the Plaintiff based on which the alleged House Pass No. 82 of 1972 was issued to the Plaintiff was mostly illegible and was likely to be a fabricated document. The Ld. Counsel for the Plaintiff on the other hand vehemently argued that there was neither irregularity nor illegality in obtaining House Pass No. 82 of 1972 Dated. 3.5.1972 by the Plaintiff.

13. Now, to the evidence. PW 2 Shri. Lalrema Kawlni did not depose about the allotment of land to the Plaintiff by the Zemabawk Village Council. The Plaintiff (PW 1) stated in his cross-examination at *(Para 3)*, "The VC Pass was issued to me by the Zemabawk VC on the basis of the Zemabawk Village Council Meeting Minute and the House Pass No. 82 of 1972 was issued to me on 3.5.1972". During his cross-examination by the Ld AGA representing the Defendant No 3 – 6, the Plaintiff at *(Para 2)* stated, "I do not have any proof to show that prior permission has been given by the Executive Committee of the Mizo District Council before issuance of the said House Pass". PW 3 Shri. Lalthianghlina during cross-examination by the Ld Counsel for Defendant No 1 and 2 at *(Para 7)* stated, "I did not know if any permission was given by the District Council/Government of Mizoram for allotment of the said land to the Plaintiff". PW 4 Shri R. Tlanga who was the President, Zemabawk Village Council in 1984 - 1987 during cross-examination by the Ld Counsel for Defendant No 1 and 2 at *(Para 14)* stated, "I had issued the duplicate VC Pass to the Plaintiff after verifying from the VC Record that the Zemabawk VC had in fact given VC Pass No. 82 to the Plaintiff in 1972. However, I did not see any mention of the District Council giving permission to the

VC for giving of the said land to the Plaintiff. The District Council had no say in the allotted of land by the Zemabawk VC in the Zemabawk area". Also at (*Para 13*), he stated, "I do not know if there is any record in the VC Record pertaining to the giving of land by the VC to the Plaintiff". Again, at (*Para 6*), he stated, "I was the VCP (Village Council President) of Zemabawk from 1984 to 1987. I used to go to the Plaintiff's Office during those times as the Plaintiff was the Director of the Land Revenue & Settlement".

14. From the above depositions, it appeared that out of the four Plaintiff's witnesses including himself, none of them could say that House Pass No. 82 of 1972 Dated. 3.5.1972 was issued to the Plaintiff with the prior permission or previous approval of Mizo District Council, Executive Committee. In the meanwhile, Notification No. ED.7/1444-57 Dated Aijal, the 9th June, 1960 issued by the Office of the Mizo District Council, Executive Department (Exhibit D 1) says,

"In the exercise of the powers conferred under section 3 of the Lushai Hills District (House sites) Act, 1953 (Act No 1 of 1953) as amended by the Mizo District (House Sites) (Amendment) Act, 1959 (Act No 1 of 1960), the Executive Committee of the Mizo District Council is pleased to declare the following Villages/Areas as protected area where **allotment of sites shall be done by Village Council only with the previous approval of the Executive Committee**".

1. Lunglawn
2. Zohnuai/Zotlang in Lunglei Sub-Division
3. Chaltlang (S)
4. Mel 3 under Hlimen Village Council
5. **Zemabawk**"

15. It appeared that the House Pass No. 82 of 1972 was re-issued to the Plaintiff. However, when it was issued in 1972 and re-issued in 1986, the Plaintiff could not say that the then Zemabawk Village Council did take the prior approval of the Mizo District Council before issuance of the said VC Pass as required by the Notification No. ED.7/1444-57 Dated. 9.6.1960 issued by the Office of the Mizo District Council, Executive Department. In the meanwhile, it appeared from the Plaintiff's evidence that after verifying and proving from the Meeting Minutes of the then Zemabawk Village Council that the VC Pass No. 82 of 1972 had been issued to the

Plaintiff. Due to lost of the original copy, it was re-issued in the year 1986 to the Plaintiff.

16. *This Court considered that the Village Council of Zemabawk at that time in the year 1972 was competent to issue Village Council Pass. They were competent to issue VC Pass with prior approval of the then Mizo District Council. They were not totally barred from doing so. Accordingly, they issued the Village Council Pass No. 82 of 1972 to the Plaintiff. The Defendants simply said that the then Zemabawk Village Council did not take prior approval of the Mizo District Council before issuance of the said VC Pass No. 82 of 1972 to the Plaintiff. They gave no sufficient evidence either oral or documentary. They did not **disprove** it by way of evidence. Further considers that the official acts are presumed to be done as per Law unless the Party alleging illegal or invalid proves the said alleged illegality or invalidity. No doubt, the challenged VC Pass No. 82 of 1972 had been issued forty six (46) years ago. Hence, the mere say without proving that the VC Pass No. 82 of 1972 Dated. 3.5.1972 was issued to the Plaintiff without prior permission or previous approval of Mizo District Council, Executive Committee at this belated stage does not find favour with this Court. The onus to prove that the then Zemabawk Village Council did not take prior approval of the Mizo District Council before issuance of the said VC Pass No. 82 of 1972 to the Plaintiff lies upon the Defendants. Hence, this issue is decided in favour of the Plaintiff.*

The Hon'ble Supreme Court in Gopal Narain Vs State of Uttar Pradesh AIR 1964 SC 370 held that there is a presumption when a statutory authority makes an order that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the Party, which makes an allegation that the act has not regularly been performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

Sec 114 of the Indian Evidence Act, 1872 says, "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".

17. - *Issue No 6: Whether LSC No. AZL - 1891 of 1986 is valid or not?*

- Issue No 7: Whether the validity of the Plaintiff's Village Council Pass No. 82 of 1972 can be challenged at this belated stage on the ground that the same was issued without prior permission of the Executive Committee of the erstwhile Mizo District Council vide Notification No. ED.7/1444-57 Dated. 9.6.1960 while the Plaintiff's Village Council Pass No. 82 of 1972 has not been questioned in any manner by the Mizo District Council or any other person since the date of its issuance till it was converted into LSC No. AZL - 1891 of 1986 and also whether the Annexure 8 to the Complaint (Show Cause Notice Dated. 13.7.2010) issued by the Defendant No 6 approved the genuineness of the said Plaintiff's Village Council Pass? If not, whether the Plaintiff's title and ownership over the land covered under LSC No. AZL - 1891 of 1986 and the authenticity of the LSC No. AZL - 1891 of 1986 are to be upheld?

18. As submitted that the Plaintiff's LSC No. AZL - 1891 of 1986 is originated from House Pass No. 82 of 1972 and the LSC No. 103201/01/605 of 2002 and the LSC No. 103201/01/604 of 2002 issued to the Defendant No 1 and 2 are originated from the Garden Permit No. 682 of 1963, these two Issues are for the sake of brevity taken together for consideration. Before moving further, regarding as to whether the validity of the Plaintiff's Village Council Pass No. 82 of 1972 can be challenged at this belated stage on the ground that the same was issued without prior permission of the Executive Committee of the erstwhile Mizo District Council vide Notification No. ED.7/1444-57 Dated. 9.6.1960 while the Plaintiff's Village Council Pass No. 82 of 1972 has not been questioned in any manner by the Mizo District Council or any other person since the date of its issuance till it was converted into LSC No. AZL - 1891 of 1986, in the light of observation made in Issue No 5, no further journey is required.

19. With regard to the validity of the Plaintiff's LSC No. AZL - 1891 of 1986, *this Court considers that the Government Land Revenue & Settlement Department is competent to issue LSC. Accordingly, they had issued LSC No. AZL - 1891 of 1986 to the Plaintiff in the year 1986. In fact, the Government Land Revenue & Settlement Department is one of the parties in the instant case. They had in fact issued the said LSC based on that VC Pass No. 82 of 1972. If the said VC Pass No.*

82 of 1972 could not be converted into LSC directly at that point of time or if the said VC Pass No. 82 of 1972 was issued without prior approval of the then Mizo District Council, the said LSC should have not been issued by them to the Plaintiff. In fact, it appeared from the document that the authority who had issued the said LSC was competent to do so. It also appeared from the evidence that the Revenue Taxes paid by the Plaintiff had also been received and accepted by the Government Revenue Department for a period of thirty two (32) years since the birth of the challenged LSC in 1986. Again, even in the Show Cause Notice Dated. 13.7.2010 (Annexure - 8 to the Plaint) that was sent to the Plaintiff by the State-Defendant, it appeared that not due to the invalidity of the Plaintiff's LSC No. AZL - 1891 of 1986 but due to the overlapping of the areas of land that the Government Land Revenue & Settlement Department was intending to cancel the Plaintiff's LSC. As a matter of fact, if illegality or irregularity or else is found and proved, the State-Defendant is competent to take necessary action upto cancellation of allotment of land to the Plaintiff as provided under Sec 33 (1) of The Mizoram (Land Revenue) Act, 2013 (Act No. 5 of 2013). Furthermore, Shri C. Kamlova, the then ASO - I, Land Revenue & Settlement Department who was alleged to have in his personal capacity and without approval of the Government of Mizoram in violation of the provisions of Rule 3 of the Mizo District (Land and Revenue) Rules, 1967 issued the LSC No. AZL - 1891 of 1986 to the Plaintiff was not produced as a witness by the Defendants to prove the alleged irregularity or illegality in respect of issuance of the said LSC No. AZL - 1891 of 1986 to the Plaintiff. Repeated that this Court considers that the official acts are presumed to be done as per Law unless the Party alleging illegal or invalid proves the said alleged illegality or invalidity. No doubt, the challenged LSC No. AZL - 1891 of 1986 had already been issued thirty two (32) years ago. Hence, the mere say without proving that the LSC No. AZL - 1891 of 1986 is invalid at this belated stage is not sufficient. The decided case that have been cited in the previous Issue from which this Court drew inspiration is hereby reproduced:

The Hon'ble Supreme Court in Gopal Narain Vs State of Uttar Pradesh AIR 1964 SC 370 held that there is a presumption when a statutory authority makes an order that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the Party, which makes an allegation that the act has not regularly been

performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

In Gurbakash Singh Vs Nikka Singh (1963 Supp. (1) SCR 55), the Hon'ble Supreme Court has held that the entries in mutation must be taken as correct unless the contrary is established.

20. In the meanwhile, the Ld. Counsel for Defendant No 1 and 2 and the Ld. AGA strongly argued that House Pass No. 82 of 1972 Dated. 3.5.1972 was issued in violation of Law. Before issuance, no prior permission or previous approval of Mizo District Council, Executive Committee was taken. The Plaintiff's LSC No. AZL - 1891 of 1986 was originated directly from such VC Pass No. 82 of 1972 without being converted first into a House Pass. The same was done by the ASO - I and the LSC No. AZL - 1891 of 1986 was issued to the Plaintiff on the basis of such House Pass No. 82 of 1972 which could not be considered to be a valid House Pass. Moreover, no survey, measurement or demarcation could be conducted during 1986 when the said LSC was allegedly issued in violation of Section 10 of Mizo District (Land and Revenue) Act, 1956 and Rule 6 of the Mizo District (Land and Revenue) Rules, 1967. Thus, LSC No. AZL - 1891 of 1986 could not be considered to be valid as per records.
21. The Ld. AGA also strongly argued that when an LSC was issued, approval of the Government was reflected on the first page of the LSC, however, the same was not reflected on the LSC No. AZL - 1891 of 1986. There was no signature of Issuing Officer, Surveyor - I or Surveyor - II (viz., Zokunga & C. Lalnghinglova) which indicated that the said LSC was not issued with the Government approval. Shri C. Kamlova, ASO - I, Land Revenue & Settlement Department in his personal capacity and without approval of the Government of Mizoram in violation of the provisions of Rule 3 of the Mizo District (Land and Revenue) Rules, 1967 issued the said LSC No. AZL - 1891 of 1986 to the Plaintiff. The Plaintiff was the Deputy Director, Land Revenue & Settlement, Government of Mizoram at that point of time. He due to his personal and official influence illegally obtained his LSC.
22. In corroboration, DW 3 of Defendant No 3 to 6 Shri. Rinzamlova, Deputy Director of Survey, Land Revenue & Settlement Department, Government of Mizoram

stated in his examination-in-chief at *(Para 6)*, "The Plaintiff's LSC No. AZL - 1891 of 1986 was originated from Village Council Pass No. 82 of 1972 which was issued by the Zemabawk Village Council. The Plaintiff's LSC was directly converted into LSC from the Village Council Pass without approval from appropriate authority". At *(Para 7)*, "The issuance of the Land Passes by the Village Council at Zemabawk area was restricted at the relevant time vide Notification No. ED.7.1444-57 Dated. 9.6.1960". On his cross – examination, he deposed at *(Para 2)*, "As per the relevant Revenue Laws, before converting the VC Passes into LSCs, the VC Passes should be converted into House Pass first". At *(Para 3)*, "The Plaintiff's LSC was converted into LSC directly from VC Pass without converting it to House Pass first by the ASO - I without consulting any other authority". At *(Para 4)*, "The ASO - I has no authority to issue an LSC without the prior permission of the Government".

23. The submissions during oral argument made by the Ld. Counsel for Defendant No 1 and 2 and the Ld. AGA and the evidences adduced by the Defendants' witnesses including documentary evidences attracted attention of this Court. In the meanwhile, to put in doubt on the irregularity and illegality in issuance of the Plaintiff's LSC No. AZL – 1891 of 1986, the Plaintiff's witness No – 4 who was the President, Zemabawk Village Council in 1984 - 1987 and who had re-issued the said VC Pass No. 82 of 1972 to the Plaintiff during cross-examination by the Ld Counsel for Defendant No 1 and 2 at *(Para 14)* stated that he used to go to the Plaintiff's Office during those times as the Plaintiff was the Director of the Land Revenue & Settlement. It appeared that the Plaintiff was holding a high official post in the Department of the Land Revenue & Settlement when the LSC No. AZL – 1891 of 1986 was issued in his favour. Furthermore, the Ld. AGA during oral argument rightly pointed out that when an LSC was issued, approval of the Government was reflected on the first page of the LSC, however, the same was not reflected on the LSC No. AZL - 1891 of 1986. There was no signature of Issuing Officer, Surveyor - I or Surveyor - II (viz., Zokunga & C. Lalnghinglova) which indicated that the said LSC was not issued with the Government approval. Shri C. Kamlova, ASO - I, Land Revenue & Settlement Department in his personal capacity and without approval of the Government of Mizoram issued it. Perused the documents on record including a copy of the Plaintiff's LSC No. AZL – 1891 of 1986 (Plaintiff's Annexure – 2) and found that there was no signature of the Issuing Officer Shri. C Kamlova. Although it was written that during survey of the

plot of land (LSC No. AZL – 1891 of 1986), it was demarcated by Shri. Zokunga and checked by Shri. C Lalnghinglova. However, the signatures of these two officials were not found on the said LSC. Again, Shri. C Kamlova who was alleged to have approved the said LSC also gave no signature on the said Plaintiff's LSC. In the meanwhile, the three officials i.e demarcator, checker and approver duly gave their signatures on the Defendants' LSCs. Again, the lines "***(This settlement is made with approval of Government/Director, Land Revenue & Settlement Department, Mizoram vide letter No.....)***" are missed on the first page of the Plaintiff's LSC No. AZL – 1891 of 1986 when the same are found in the LSCs issued to the Defendants and others. It is well known that in criminal case, the case is to be proved beyond the shadow of all reasonable doubts but in civil case, the preponderance of possibilities of evidence is also sufficient. The burden of proof lies on the Plaintiff and the Plaintiff has to convince the Court. In civil case, satisfied on a preponderance of possibilities does not mean that satisfied beyond reasonable doubt. Hence, these Issues are decided in favour of the Defendants.

The Hon'ble Gauhati High Court in Teshy Shelly Vs Tayum Ete decided on 22nd March, 2006 has held that in deciding a civil suit, it is preponderance of probability of the case of both the contesting parties that should be taken into consideration. The principle and test of strict liability i.e proof beyond reasonable doubt is not required to be applied in deciding a civil suit.

Sec 114 of the Indian Evidence Act, 1872 says, "The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".

24. *Issue No 8: Whether the holder of the Garden Permit has a transferable and heritable right (excluding the right of use of the land) over the land covered by the Garden Permit under Land laws in Mizoram. If not, whether the word "Properties" mentioned in Heirship Certificate Memo No. SDCC/H.C-134/2000/605-7 Dated. 14.3.2000 as the properties of Shri. Liantudaia (L) can include the Permit No. 190 of 1974 and whether Shri. H Thanzauva can inherit the land covered under Permit No. 190 of 1974?*

25. Repeated that the said Garden Permit No. 682 of 1963 was converted first into two i.e Permit No. 190 of 1974 and Permit No. 191 of 1974. Later, Permit No. 190 of 1974 was converted into House Pass No. 550 of 2002 and House Pass No. 551 of 2002. Again, these two House Passes were converted into LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002. The Government Revenue Department was the competent authority that had issued the said LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002. With regard to this Issue, this Court is in the light of the previous decided Issues in opinion of that the onus to prove that the holder of the Garden Permit has neither a transferable nor a heritable right (excluding the right of use of the land) over the land covered by the Garden Permit under Land laws in Mizoram lies upon the Plaintiff and the same is not proved by the Plaintiff by way of evidence. Hence, when the said Garden Permit No. 682 of 1963 had already been converted into LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002 by the competent authority and remained unchallenged for a period of fifty five (55) years, the challenge made in this Issue at this belated stage does not attract attention of this Court. Accordingly, this Issue is decided in favour of the Defendants and the decided cases that have been cited in the previous Issues from which this Court drew inspiration are hereby reproduced:

In Gurbakash Singh Vs Nikka Singh (1963 Supp. (1) SCR 55), the Hon'ble Supreme Court has held that the entries in mutation must be taken as correct unless the contrary is established.

The Hon'ble Supreme Court in Gopal Narain Vs State of Uttar Pradesh AIR 1964 SC 370 held that there is a presumption when a statutory authority makes an order that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the Party, which makes an allegation that the act has not regularly been performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

26. *Issue No 9, 10, 11 and 12:* For the sake of brevity, the following Issues are considered together.

- *Issue No 9: Whether the original area of the land covered under Permit No. 682 of 1963 in the name of Shri. Liantudaia (L) was modified and altered when it was bifurcated into two plots and when fresh Permits No. 190 of 1974 and No. 191 of 1974 were issued for the same? If so, whether it will be correct and right to consider the question of overlapping to each other of the Plaintiff's LSC No. AZL - 1891 of 1986 and the Defendant No 1 and 2's LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002 basis of the original area of Garden Permit No. 682 of 1963?*
- *Issue No 10: Whether the Plaintiff's LSC No. AZL - 1891 of 1986 originated directly from the Plaintiff's VC Pass No. 82 of 1972 without any mutation of the VC Pass No. 82 of 1972 in the area and boundary before its mutation into LSC No. AZL - 1891 of 1986?*
- *Issue No 11: Whether it would be right for the Defendants Land Revenue & Settlement Department to consider the factual position that the Plaintiff's LSC No. AZL - 1891 of 1986 came directly from his Village Council Pass No. 82 of 1972 whereas the Defendant No 1 & 2 LSCs i.e LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002 came from the House Passes No. 550 of 2002 and No. 551 of 2002 (i.e House Passes originated from late Shri. Liantudaia's Garden Permit No. 190 of 1974) and that the said Permit No. 190 of 1974 originated from Garden Permit No. 682 of 1963 after bifurcation of Permit No. 682 of 1963 into two portions due to the construction of road within the land covered by Garden Permit No. 682 of 1963 and after the area of the said Garden Permit No. 682 of 1963 had been mutated and decreased? If yes, whether the discussion and observation of the Defendant No. 6 in his Show Cause Notice Dated. 13.7.2010 (Annexure - 8 to the Plaint) should be denied and quashed?*
- *Issue No 12: Considering the loss of its originality in area and boundary by Shri. Liantudaia (L)'s Garden Permit No. 682 of 1963 when the same was converted into 2 Permits i.e Permit No. 190 of 1974 and Permit No. 191 of 1974, whether the stand of the Plaintiff that his LSC No. AZL - 1891 of 1986 is encroached by the Defendants' LSC could be right. If the Plaintiff's stand is right and to be*

maintained, whether the LSCs of the Defendants No 1 and 2 are to be liable to be cancelled.

27. Regarding these Issues, it would be repeated that the said Garden Permit No. 682 of 1963 was converted first into Permit No. 190 of 1974 and Permit No. 191 of 1974. Later, Permit No. 190 of 1974 was converted into House Pass No. 550 of 2002 and House Pass No. 551 of 2002. Again, these two House Passes were converted into LSC No. 103201/01/605 of 2002 and LSC No. 103201/01/604 of 2002. From the Show Cause Notice (Annexure 8 to the Plaint) also appeared that the Government Revenue Department had on receipt of the complaints from the Plaintiff and the Defendant No 1 and 2 conducted spot verification. From the Report of the spot verification of the suit land, it was found that the Plaintiff's LSC and the Defendants' LSCs were overlapping to each other. The original documents were thoroughly verified from the Office Record and found that the VC Pass No. 82 of 1972 of the Plaintiff was junior to that of the Garden Permit No. 682 of 1963 from which the Defendant No 1 and 2's LSCs were made. DW 3 of Defendants No 3 – 6, Shri Rinzamlova, Deputy Director of Survey, Land Revenue & Settlement Department, Government of Mizoram in his examination-in-chief stated at *(Para 3)*, "That the Garden Permit No. 682 of 1963 was issued to Shri. Liantudaia in the year 1963 which was later on bifurcated into two Permits such as Permit No. 190 of 1974 and Permit No. 191 of 1974. These two Permits superseded the Garden Permit No. 682 of 1963 and this fact could be seen from the Records of the Revenue Department". At *(Para 4)*, "That the Permit No. 190 of 1974 was again divided into ten House Passes. Among these ten House Passes, House Pass No. 550 of 2002 and House Pass No. 551 of 2002 were allotted to the Defendant No. 1 and 2 respectively". At *(Para 5)*, "The Defendant No 1 and 2 applied for conversion of their respective House Passes into LSC and after complying with all necessary steps and having approved their application by the Director, Land Revenue and Settlement Department, the said House Passes were converted into LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002".

28. *Hence, it is considered that the Plaintiff did not prove before the Court that when the original area of the land covered under Permit No. 682 of 1963 was modified, altered and bifurcated, it fell within the Plaintiff's VC Pass No. 82 of 1972 and overlapped the said VC Pass.* In other words, there was neither oral nor

documentary proof that the question of overlapping to each other of the Plaintiff's area of land and the Defendants' areas of lands was the outcome of such alleged modification, alteration and bifurcation of the said Garden Permit No. 682 of 1963. No doubt, the burden of proof lies on the Plaintiff. The deposition of DW 2 of Defendant No 3 - 6 during cross-examination that the Government Land Revenue & Settlement Department did not inform him about the existence of the Plaintiff's LSC No. AZL – 1891 of 1986 when he was appointed to conduct spot verification against the House Pass No. 550 of 2002 and House Pass No. 551 of 2002 alone was not quite strong enough for proving fact. Hence, these Issues are decided in favour of the Defendants.

29. *ISSUE No 13: Whether the impugned Show Cause Notice Dated. 13.7.2010 (Annexure - 8 to the Plaintiff) is liable to be set aside and dismissed.* In fact, the issuing authority of this Show Cause Notice Dated. 13.7.2010 is competent to do so. Based on the materials available on record and maintained by them, the State Government Land Revenue & Settlement Department, Mizoram had taken step and issued Show Cause Notice Dated. 13.07.2010 (Annexure - 8 to the Plaintiff) to the Plaintiff. This Court takes a view that the *principle of natural justice* is being applied by *providing opportunity of being heard* to the Plaintiff before cancellation of allotment of land to him. Further, the State-Defendant had before issuance of this Show Cause Notice Dated. 13.07.2010 to the Plaintiff conducted spot verification of the suit land. When they found that the Plaintiff's LSC and the Defendants' LSCs were overlapping to each other, they thoroughly verified the original documents from the Office Record. They found that the VC Pass No. 82 of 1972 of the Plaintiff was junior to that of the Garden Permit No. 682 of 1963 from which the Defendant No 1 and 2's LSCs were made. Only thereafter, they issued the said Show Cause Notice to the Plaintiff. In fact, the Government Department is always expected to make and maintain true and correct entries and records. No doubt, settlement of dispute on boundary, overlapping of areas of land upto cancellation of allotment of land etc are within the domain of Revenue Court/Government Land Revenue & Settlement Department. Under Sec 33 (1) of the Mizoram (Land Revenue) Act, 2013 (Act No. 5 of 2013), the State Government is authorised to cancel an allotment of land or of the rights conferred on the land holder. Hence, at this stage no sufficient reasons to set aside and dismiss the said

Show Cause Notice Dated. 13.07.2010 (Annexure - 8 to the Plaint) issued to the Plaintiff are found.

The Mizoram (Land Revenue) Act, 2013 (Act No. 5 of 2013) Sec 12 says, "All lands, public roads, streets.....with all absolute right, title, interest and possession in or over the same or appurtenant thereto, shall be the property of the State Government".

The Mizoram (Land Revenue) Act, 2013 (Act No. 5 of 2013) Sec 33 (1) says, "Notwithstanding anything to the contrary contained in sections 22 to 28 of this Act, the Collector or the Settlement Officer or the Assistant Settlement Officer or any other Revenue Authority may cancel an allotment of land or of the rights conferred on the land holder of any of the following grounds:-

(a).....

(b) that the certificate, etc was obtained by means of any malafide misrepresentation of facts, essential to justify the grant thereof, or

(c) that the certificate, etc was obtained with deceit or illegally or fraudulently by any *malafide* concealment of material facts from the Revenue Officer and his subordinates or officials of Revenue Department or private individual, or

(i) any Pass or Certificate obtained without approval of appropriate authority, or

30. *Issue No 14: Whether the Plaintiff entitled to the reliefs claimed by him?* As the reliefs claimed by the Plaintiff is not only for upholding of his LSC No. AZL - 1891 of 1986 and for declaring that his LSC No. AZL-1891 of 1986 is genuine and valid, we would take a further journey. Repeated that the State Government Revenue Department had issued LSC No. AZL - 1891 of 1986 to the Plaintiff and the LSC No. 103201/01/605 of 2002 to Smt. Ramdinsangi (Defendant No 1) and the LSC No. 103201/01/604 of 2002 to Shri. Zothansanga (Defendant No 2). After spot verification, the Government Land Revenue Department, Aizawl found that the Plaintiff's area of land and the Defendants' areas of lands were overlapping to each other. As such, the Government Revenue Department in the light of spot verification intended to cancel the Plaintiff's LSC on the ground that the Defendants' LSCs are originated from the Garden Permit No. 682 of 1963 which was senior to the Plaintiff's. From evidence, it appeared that the Defendants' LSCs i.e LSC No. 103201/01/604 of 2002 issued to Defendant No 2 and LSC No. 103201/01/605 of 2002 issued to Defendant No 1 are originated from the Garden Permit No. 682 of 1963 belonged to Shri. Liantudaia (L). In the meanwhile, the

Plaintiff's LSC No. AZL - 1891 of 1986 is originated from Village Council Pass No. 82 of 1972 issued by the then Zemabawk Village Council. This Court considered that although either the original or photocopy of the said Garden Permit No. 682 of 1963 was nowhere to be seen now, it appeared from the Record kept and maintained by the Government Land Revenue & Settlement Department that the Defendants' LSCs are originated from the Garden Permit No. 682 of 1963 belonged to Shri. Liantudaia (L). This Court was convinced by the submission made in Rejoinder that as the said Garden Permit No. 682 of 1963 had been converted into two new Permits i.e Permit No. 190 of 1974 and Permit No. 191 of 1974, the said Garden Permit No. 682 of 1963 was submitted to the Authorities and no longer with the holder. Shri. Rinzamlova, Deputy Director of Survey, Land Revenue & Settlement Department, Government of Mizoram (DW 3 of Defendant No 3 - 6) in his examination-in-chief stated that the Garden Permit No. 682 of 1963 was issued to Shri. Liantudaia (L) in the year 1963 which was later on bifurcated into two Permits such as Permit No. 190 of 1974 and Permit No. 191 of 1974. These two Permits superseded the Garden Permit No. 682 of 1963 and this fact could be seen from the Records of the Revenue Department. That the Permit No. 190 of 1974 was again divided into ten House Passes and among these ten House Passes, House Pass No. 550 of 2002 and House Pass No. 551 of 2002 were allotted to the Defendant No. 1 and 2 respectively.....the said House Passes were converted into LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002. The above evidence adduced by DW 3 of Defendant No 3 to 6 attracted attention of this Court.

31. *In fact, the Government is for the people. It has been functioning and running for the welfare of the people. It is expected to maintain equality, impartiality and avoid favouritism and any kinds of discrimination among the citizens. It is highly expected to tell the truth and stand on the truth even when a dispute on land came up between or amongst its citizens. Accordingly, the LSCs issued and the Land Records that have been kept and maintained by the State Government Land Revenue & Settlement Department are also expected to be correct and true. All these acts such as entries made in the Record Book etc were Public Records and done by the public servants in the discharge of their official duties. They have been vested with extraordinary degree of confidence, because, the public records are kept only for public benefit. It could be seen from the said Permit No. 190 of*

1974 (Exhibit D – 7) and the Revenue Record that the Defendants' LSCs are originated from the Garden Permit No. 682 of 1963.

Section 35 of the Indian Evidence Act, 1872: Relevancy of entry in public 1 [record or an electronic record] made in performance of duty. An entry in any public or other official book, register or 1 [record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, or 1 [record or an electronic record] is kept, is itself a relevant fact.

In Gurbakash Singh Vs Nikka Singh (1963 Supp. (1) SCR 55), the Hon'ble Supreme Court has held that the entries in mutation must be taken as correct unless the contrary is established.

The Hon'ble Supreme Court in Gopal Narain Vs State of Uttar Pradesh AIR 1964 SC 370 held that there is a presumption when a statutory authority makes an order that it has followed the prescribed procedure and such a presumption can only be rebutted by adducing appropriate evidence. However, the Party, which makes an allegation that the act has not regularly been performed, the onus to prove lies upon him that the proper procedure has not been followed or the act has not been performed as was required under the law.

32. Before parting out, the Ld. Counsel for the Plaintiff had asked for the said Garden Permit No. 682 of 1963 which could not be produced by the Defendants before the Court. However, the Ld. Counsel for the Plaintiff did not ask for the above said Revenue Record Book and the said Permit No. 190 of 1974 where the Defendants' LSCs are originated from the said Garden Permit No. 682 of 1963 could be seen as per the Defendants' version.

The Hon'ble Supreme Court in Union of India Vs Ibrahim Uddin & Anr on 17th July, 2012 has held that Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some

reasonable grounds. In case, one Party has asked the Court to direct the other side to produce the document and other side failed to comply with the Court's order, the Court may be justified in drawing the adverse inference.

In Mahendra L. Jain & Ors Vs Indore Development Authority & Ors., (2005) 1 SCC 639, the Hon'ble Supreme Court held that mere non-production of documents would not result in adverse inference.

33. *To conclude*, as said, as the reliefs claimed by the Plaintiff is not only for upholding of his LSC No. AZL - 1891 of 1986 and for declaring that his LSC No. AZL-1891 of 1986 is genuine and valid, we would make a further move. This Court from the evidences found no sufficient reasons to cancel the Defendants' LSCs or grant other reliefs claimed by the Plaintiff. Apart from the invalidity of the Plaintiff's LSC No. AZL - 1891 of 1986, this Court is in opinion of that the Defendants' LSCs. i.e LSC No.103201/01/604 of 2002 and LSC No.103201/01/605 of 2002 are originated from the said Garden Permit No. 682 of 1963 belonged to Shri. Liantudaia (L). The Plaintiff's LSC No. AZL - 1891 of 1986 is originated from the VC Pass No. 82 of 1972. There is an overlapping of the area of land covered under the Plaintiff's LSC and the Defendant No 1 and 2's LSCs. In short, this Court held a view that a senior document should prevail over junior. The first document proving possession of the plot of land in question in the present case was the Garden Permit No. 682 of 1963 issued to Shri. Liantudaia (L). Hence, the LSC No. 103201/01/604 of 2002 and LSC No. 103201/01/605 of 2002 issued to the Defendant No 2 and 1 respectively shall prevail over the Plaintiff's LSC No. AZL - 1891 of 1986. The documents (Pass or Permit) granted earlier by the competent authority in those days would have a superior right in preference to the one granted later. Simply, first in time shall prevail over the others. *The Maxim says, "Qui prior est tempore potior est jure (he who is earlier in time is stronger in law)*. It is a *principle of natural justice* that if rights are created in favour of two or more persons at different times, the one who has the advantage in time should also have the advantage in Law.
34. In the light of the above observations and findings, this Court does not find favour with the claim of possession of the plot of land in question by the Plaintiff and other reliefs claimed. No Counter claim is filed. Hence, the present case stands dismissed.

35. The parties shall bear their own costs.

36. With the above Order, the present case stands disposed of.

**Given under my hand and Seal of this Court on this day of the
4th June, 2018 Anno Domini.**

(H. LALDUHSANGA)
Civil Judge - II
Aizawl

Memo No.....: Dated Aizawl, the 4th June , 2018.

Copy to:-

1. Shri. JC Sengluaia S/o Thangkanglova (L) R/o Electric Veng, Aizawl, Aizawl District, Mizoram through Counsel Shri. B Lalramenga Advocate.
2. Smt. Ramdinsangi D/o Saithangpuii Sailo R/o Tuikual North, Aizawl, Aizawl District, Mizoram through Counsel Shri R. Laltanpuia Advocate.
3. Shri. Zothansanga S/o Saithangpuii Sailo R/o Tuikual North, Aizawl, Aizawl District, Mizoram through Counsel Shri R. Laltanpuia Advocate.
4. The State of Mizoram Represented by the Chief Secretary to the Government of Mizoram.
5. The Secretary to the Government of Mizoram, Revenue Department, Government of Mizoram.
6. The Director, Land Revenue & Settlement, Government of Mizoram, Aizawl, Mizoram.
7. The Assistant Settlement Officer, Land Revenue & Settlement, Government of Mizoram, Aizawl, Mizoram.
8. i/c Judicial Section.
9. Case record.
10. Guard File.

PESHKAR