

**IN THE COURT OF CIVIL JUDGE  
AIZAWL JUDICIAL DISTRICT; AIZAWL MIZORAM.**

Declaratory Suit No. 2 of 2015

Smt Lalchawimawii  
W/o Piangvela  
R/o Chhing Veng, Aizawl

: Plaintiff

Represented By  
Shri Lalramliana  
S/o Thangkapa (L)  
R/o Chhing Veng, Aizawl  
Mizoram

Vrs

Shri Vanthuama  
R/o Dawrpui, (Sobji Bazar  
Aizawl, Mizoram

: Defendant

BEFORE  
H. LALDUHSANGA, Civil Judge – II  
Aizawl

For the Plaintiff	: Shri T Lalnunsiana, Advocate & ors
For the Defendant	: Smt Zothansangi, Advocate & ors
Date of Institution	: 04.02.2015
Judgment Pronounced on	: 26.09.2018
Judgment Delivered on	: 26.09.2018

INDEX

PLAINTIFF'S WITNESSES

PW 1 : Shri Lalramliana  
PW 2 : Smt. C Lalthangmawii  
PW 3 : Smt MC Lalrinmawii  
PW 4 : Smt Lalnunzauvi  
PW 5: Smt Zonunpuui  
PW 6 : Smt Laltlanzari

*No of Total Pages of Judgment & Order: 8 (Eight)*

PLAINTIFF'S EXHIBITS

Ext P – 1 : Plaint  
Ext P – 1 (a) & (b) : Signatures of Plaintiff  
Ext P – 2 : Special Power of Attorney  
Ext P – 3 : Drugs License (Wholesale) issued to Plaintiff  
Ext P – 4 : Drugs License (General/Retail) issued to Plaintiff  
Ext P – 5 : Certificate of Registration issued to Plaintiff  
Ext P – 6 : 5 Year National Savings Certificate  
Ext P – 7 : Certificate of Registration (VAT)  
Ext P – 8 : Certificate of Registration of shop issued to Plaintiff

DEFENDANT'S WITNESES

DW – 1 Shri Vanthuama  
DW – 2 Smt Lalrindiki  
DW – 3 Shri H Malsawma

DEFENDANT'S ANNEXURES AND EXHIBITS

Ext D – 1 : Monthly rent receipt  
Ext D – 2 : House Lease Agreement  
Ext D – 3 : Notification to Defendant by Dawrpui Local Council  
Ext D – 3 (a) : Signature of Shri H Malsawma, Chairman of Dawrpui Local Council  
Ext D – 4 : Notification to Defendant by Dawrpui Local Council  
Ext D – 4 (a) : Signature of Shri H Malsawma, Chairman of Dawrpui Local Council

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**JUDGMENT & ORDER**

**Dated 26.09.2018**

1. This is a Declaratory suit No. 2 of 2015 for continuous occupation of the Defendant's building by the Plaintiff on 04.02.2015. The Plaintiff submits in her *Plaint inter alia* that the Defendant is the landlord of the Plaintiff wherein the Plaintiff has been occupying one portion of his building measuring about 37 ft. X 13ft located at ABC Lane, New Market, Aizawl, Mizoram since October, 2006. The Plaintiff despite regular payment of monthly rent i.e. Rs. 15,000/- well in time received an oral request from the Defendant to vacate the rented shop. Having no other alternatives, the Plaintiff is now compelled to institute the instant case against the Defendant. That for setting up Drug Store in the aforesaid location, the Plaintiff is holding valid Drug License bearing Number 0101090305 and 0101090306 date 04.09.09 and the same is renewed as per laws having validity till 31.12.2018. The present value of Drugs kept in the said shop is around Rs. 48,68,000/- (Rupees forty-eight lakhs and sixty eight thousand only). The Plaintiff also duly paid taxes as levied by Government as per laws for which she also

holds Registration and Turn Over Certificate under the Central Sales Tax bearing Number MIZ : 5467, TIN : 15500557156 (Central) and the same is held valid upto 31.12.2018. The Plaintiff also got Certificate of Registration under the Mizoram Value Added Tax Rules, 2005 bearing No. TIN 15200351048 for which she is liable to pay tax with effect from 9.8.2010 and taxes levied upon her is paid accordingly till date. Under the Mizoram Shops & Establishment Act, 2010, the said Drug Store is also registered bearing Registration No. MSE/235/2012 dt. 02.07.2012. The Plaintiff in a relevant time and with the knowledge of the Defendant has incurred Rs. 18,750/- for getting Electric connection. She also spent around Rs. 21,860/- for construction of Septic Tank in the said shop. The said Drug Store is the main source of Plaintiff's income as she has no other source of income to support herself and her respective family. Moreover, all the relevant Certificates and documents are also held in the name and location of the said rented house. Since there is no building to be rented is available in that area, the Plaintiff could not vacate the house at present. However, despite giving admire to the landlord, a request to vacate the house within the very limited period is not possible at all inasmuch as most of the documents are also held valid till 2018. Stress is also made that a Drug License is issued covering a specified area as such it is not possible to leave the said specified portion of locality or change of location without the consent of issuing authority. Due to the facts and its supporting documents as highlighted above, the Plaintiff has no other option but to seek redressal from this Court protecting her right to enjoy proper livelihood with fair, dignified and respectful manners. If the relief claim in this instant suit is not granted, the Plaintiff would certainly suffer a huge irreparable loss which is detrimental to his personal rights and liberty envisaged by the Constitution of India and other laws made thereunder. There is a threat to vacate the said portion of building by the Defendant, the Plaintiff has also prayed to pass Temporary Injunction restraining the Defendant from threatening the peaceful possession of the said shop by the Plaintiff for which a separate Miscellaneous Application is filed. That the cause of action has arisen from January, 2015 when the Defendant has started making strong request to vacate the above stated portion of his building and the same is continued till date.

2. The Defendant in *Written statement* submitted inter alia that the Plaintiff had no locus standi to file the present case against the Defendant. The Plaintiff never informed that she was a cancer patient. Denied that the Plaintiff had been occupying one portion of his building measuring about 37 ft. X 13ft. located at ABC Lane, New Market, Aizawl, Mizoram since October, 2006 @ Rs. 15,000/- per month. It was that one Shri Khawvelthanga of Bethlehem Vengthlang, Aizawl occupied @ Rs 10,000/- per month. Presumed that the said Shri Khawvelthanga had sub let the said portion @ Rs 15,000/- per month. One of his daughters used to hand over rent to the Defendant. In the last part of 2012, as vehemently requested by the Plaintiff, the Parties signed an agreement wherein the Plaintiff was allowed to occupy the said portion of building for a period of two years i.e from 10.01.2013 to 10.01.2015 @ Rs 15,000/- per month for rental charges. In the month of November, 2014 just before the agreement period was over, wife of the Defendant informed the Plaintiff to vacate the said building after 10.01.2015 as the septic tank inside the building needed to get repaired. In January, 2015, the Plaintiff was informed again. However, on requested by the Plaintiff, the Defendant extended till February, 2015 on humanitarian ground. Denied to have threatened the Plaintiff to vacate the building. On 04.11.2014, the members of Dawrpui Local Council visited the Bazar area which falls under their administrative jurisdiction and inspected many Septic Tanks and found that there was a leakage in the Septic Tanks occupied by the Plaintiff. On 08.11.2014 the Local Council instructed the Defendant by letter to get repaired the said Septic Tank however the same could not be done as the building was being occupied by the Plaintiff. Hence, the reminder was sent to the Defendant on 19.02.2015. As such, they informed the Plaintiff to vacate the building.

3. The following issues are framed.

1. Whether the suit is maintainable in its present form and style
2. Whether there is any cause of action
3. Whether the Plaintiff as a tenant has regularly paid rent to the Defendant for occupying a portion of building located at ABC Lane, New Market, Aizawl, Mizoram

4. Whether the Defendant has the right to evict the Plaintiff. If so, on what ground
5. Whether the Plaintiff is entitled to the reliefs claimed. If so, to what extent

#### DECISION AND REASONS FOR DECISION

4. ISSUE No 1 and 2: Whether the suit is maintainable in its present form and style and whether there is any cause of action. Regarding these issues, the Ld. Predecessor Court had maintained the suit. No further journey is required.
5. ISSUE No 3: Whether the Plaintiff as a tenant has regularly paid rent to the Defendant for occupying a portion of building located at ABC Lane, New Market, Aizawl, Mizoram. From the evidence, it appeared that the Plaintiff as a tenant has been paying rent regularly to the Defendant for occupying a portion of the said building. When the Plaintiff submitted that she had been paying regularly monthly rent to the Defendant landlord, the Defendant neither in his written statement nor in his evidence talked about the monthly rent. Hence, this issue is decided in favour of the Plaintiff.
6. ISSUE No 4: Whether the Defendant has the right to evict the Plaintiff. If so, on what ground. This Court had repeatedly gone through the pleadings and perused the entire evidence. The Plaintiff and her five witnesses adduced evidence. The Plaintiff submitted that the Defendant is the landlord of the Plaintiff wherein the Plaintiff has occupied one portion of his building measuring about 37 ft. X 13ft. located at ABC Lane, New Market, Aizawl, Mizoram since October, 2006. The Plaintiff has been making regular payment of monthly rent i.e. Rs. 15,000/-. The Defendant orally requested to vacate the rented shop. The Plaintiff is holding valid Drug License bearing Number 0101090305 and 0101090306 dated 04.09.09 and the same is renewed as per laws having validity till 31.12.2018. The present value of Drugs kept in the said shop is around Rs. 48,68,000/- (Rupees forty-eight lakhs and sixty eight thousand only). The Plaintiff also duly paid taxes as levied by Government as per laws for which she also holds Registration and Turn Over Certificate under the Central Sales Tax bearing Number MIZ : 5467, TIN : 15500557156 (Central) and the same is held valid upto 31.12.2018. The Plaintiff also

got Certificate of Registration under the Mizoram Value Added Tax Rules, 2005 bearing No. TIN 15200351048 for which she is liable to pay tax with effect from 9.8.2010 and taxes levied upon her is paid accordingly till date. Under the Mizoram Shops & Establishment Act, 2010, the said Drug Store is also registered bearing Registration No. MSE/235/2012 dt. 02.07.2012. The said Drug Store is the main source of Plaintiff's income. All the relevant Certificates and documents are also held in the name and location of the said rented house. Since there is no building to be rented is available in that area, the Plaintiff could not vacate the house at present. However, despite giving admire to the landlord, a request to vacate the house within the very limited period is not possible at all inasmuch as most of the documents are also held valid till 2018. Stress is also made that a Drug License is issued covering a specified area as such it is not possible to leave the said specified portion of locality or change of location without the consent of issuing authority.

7. In the meanwhile, the Defendant and his two witnesses adduced evidence in the Court. From evidence, it appeared that the Dawrpui Local Council had served notice to the Defendant to get repaired the said Septic Tank. DW 3 Shri H Malsawma deposed that Dawrpui Local Council whilst conducting inspection at ABC Lane, Bara Bazar, Aizawl noticed a foul of smell coming from the drainage area of Defendant's building. Upon careful observation, it appeared that the Defendant's septic Tank was leaking. As such, being a Chairman of Dawrpui Local Council on 08.11.2014 instructed the Defendant by letter to get repaired. The same could not be done as the building was being occupied by the Plaintiff. Hence, the Reminder was sent to the Defendant on 19.02.2015. PW 3 identified Ext D – 3 as the said Notice and Ext D – 3 (a) as his signature, Ext D – 4 as the said Reminder and Ext D – 4 (a) as his signature. In this corroboration, the Defendant (DW 1) and Smt Lalrindiki (DW 2) deposed that the Local Council by letter instructed the Defendant to get repaired his septic Tank. DW 1 and DW 2 identified Ext D – 3 as the said Notice and Ext D – 4 as the said Reminder. There was neither rebuttal nor shaking during cross-examination of these three witnesses. Further, the Defendant and DW 2 submitted that in the last part of 2012, as vehemently requested by the Plaintiff, the Parties signed an agreement wherein the Plaintiff was allowed to occupy

the said portion of building for a period of two years i.e from 10.01.2013 to 10.01.2015 @ Rs 15,000/- per month for rental charges. In the month of November, 2014 just before the agreement period was over, wife of the Defendant informed the Plaintiff to vacate the said building after 10.01.2015 as the septic tank inside the building needed to get repaired. In January, 2015, the Plaintiff was informed again. However, on requested by the Plaintiff, the Defendant extended till February, 2015 on humanitarian ground

8. Hence, it appeared that as per the agreement signed by the Parties, the Plaintiff was allowed to occupy only upto the month of February, 2015. This Court had repeatedly gone through and given thoughtful consideration but found no sufficient evidence to invite attention of this Court on the evidences adduced in favour of the Plaintiff. Among others, to consolidate the Plaintiff's stand, the Ld. Counsel relied on Sec 5 of the Mizoram Urban Area Rent Control Act, 1974. Having perused the same, this Court considered that from the evidence it appeared that the said Septic Tank inside the said building requires to be repaired. Furthermore, as per the agreement (Ext D - 2) signed by the Parties the Plaintiff was allowed to occupy the said building only upto February, 2015. The Plaintiff did not raise any objection to the said agreement (Ext D – 2). Hence, Sec 5 of the Mizoram Urban Area Rent Control Act, 1974, does not protect the Plaintiff. The maxim says, "An agreement overcomes law/the agreement of the parties overcomes law (Conventio vincit legem)". This issue is decided in favour of the Defendant.
9. ISSUE No 5: Whether the Plaintiff is entitled to the reliefs claimed. If so, to what extent. In the light of the above decided issues, the Plaintiff is not found entitled to the reliefs claimed.

### **ORDER**

10. In the light of the above observations and findings, this Court does not find favour with the relief claimed by the Plaintiff for continuous occupation of the Defendant's building.
11. Hence, the present case stands dismissed.
12. The parties shall bear their own costs.
13. With this Order, CMA No 13 of 2015 A/o DS No. 2 of 2015 and IA No. 552 of 2015 A/o DS No. 2 of 2015 stand vacated.
14. With the above Order, the present case stands disposed of.

**(H. LALDUHSANGA)**

Civil Judge - II

Aizawl

Memo No.....: Dated Aizawl, the 26<sup>th</sup> September, 2018.

Copy to:-

1. Smt Lalchawimawii W/o Piangvela R/o Chhinga Veng, Aizawl represented by Shri Lalramliana S/o Thangkapa (L) R/o Chhinga Veng, Aizawl, Mizoram through counsel Shri T Lalnunsiana adv 7 ors.
2. Shri Vanthuama R/o Dawrpui, (Sobji Bazar) Aizawl, Mizoram through counsel Smt Zothansangi adv & ors
3. i/c Judicial Section.
4. Case record.

**PESHKAR**