
(2018) 04 GAU CK 0140
In the Gauhati High Court
Case No : Civil Writ Petition No. 53 Of 2014

Biakngheta Sailo	Vs	APPELLANT
State of Mizoram and ors		RESPONDENT

Date of Decision : 13-04-2018

Acts Referred:

Mizo District (Land & Revenue) Act, 1956 — Section 4, 7, 8

Citation : (2018) 04 GAU CK 0140

Hon'ble Judges : N. Sailo, J

Bench : Single Bench

Advocate : L.H Lianhrima, H. Lalmalsawmi, Linda L. Fambaw,

Final Decision : Allowed

Judgement

1. Heard Mr. L.H Lianhrima, the learned senior counsel assisted by Ms. H. Lalmalsawmi for the petitioner. Also heard Mrs. Linda L. Fambawl, the learned Government Advocate appearing for the State respondents. None appears for the respondent No. 5 despite service of notice.

2. On 13.02.2018, Court passed the following order:- "By this writ petition, the petitioner has claimed appropriate relief on account of illegal occupation of his land covered by LSC No. 10/1978 (Annexure 1) with an area of 0.16 bighas, located at Zemabawk Kelpu Veng which is submitted to be under Thuampui Veng presently. According to the petitioner, he was issued the said LSC by the competent authority but however on account of certain encroachment, he and 3 (three) other similarly situated person has to approach the Civil Court by filing Civil Suit No. 1/1992. In Civil Suit, the concerned State respondents including the Boarder Road Task Force (BRTF) as well as the Village Council of Zemabawk and Thuampui Branch Y.M.A were arrayed as defendants. The Civil Suit was finally

adjudicated and decreed vide Judgment & Order dated 24.02.2011

in favour of the petitioner as plaintiff alongwith 3 (three) other plaintiffs who had jointly initiated the Civil Suit. However, despite the suit having been

decreed in favour of the petitioner, the respondents even during the pendency of the suit had constructed Thuampui Market-cum-Community Hall

within the petitioner's land covered by LSC No. 10/1978. The petitioner upon seeking information from the respondent authorities concerned about

the said construction was informed that the Thuampui Market-cum-Community Hall construction began on 05.10.2006 and completed on 22.11.2007.

It was further indicated that the land where the construction was made did not belong to the Urban Development & Poverty Alleviation Department.

In response to the writ petition, the respondent No. 1 to 4 have filed a consolidated affidavit-in-opposition on 02.12.2014, wherein they have taken the

stand that the respondent No. 5 is in possession of the land on the strength of DPL MISL No. 19/1997. It is also the stand of the respondent No. 1 to

4 in their affidavit that prior to the construction of the Market-cum-Community Hall, there was an existing Thuampui Y.M.A Community Hall. Upon

demolition of the earlier Thuampui, Community Hall, the Market-cum-Community Hall came to be constructed by the Urban Development & Poverty

Alleviation Department. It has also been contended by the respondent Nos. 1 to 4 that the petitioner has remained silent over the years when the

construction was undertaken and therefore, he has waived his right of ownership over the plot of land in question. I have considered the submission

advance by the learned counsels for the parties. Although the respondent Nos. 1 to 4 have filed a consolidated affidavit, the stand taken in the affidavit

does not explain as to how the Revenue authorities have issued the certificate of land lease in favour of the respondent No. 5 during existence of the

LSC No. 10/1978. In that view of the matter before proceeding further with the adjudication of the writ petition, I am of the considered view that the

Revenue Department should file a detailed affidavit, explaining as to how the land lease has been issued to the respondent No. 5, while the same

plot of land was already issued to the petitioner way back in the year 1978. Such affidavit shall be filed by the respondent No. 2 positively on or before

14th of March, 2018.

3. Thereafter, the case was listed on 14.03.2018 and 28.03.2018 wherein time

was sought by the learned counsels appearing for the State respondents. Today, Mrs. Linda L. Fambawl, the learned Government Advocate appearing for the State respondents submits that the Departmental Land Lease i.e., DPL MISL No. 19/1997 was issued in favour of the respondent No. 5, as the Revenue Department was not aware of the dispute raised by the writ petitioner claiming ownership of the land in question.

4. I have heard the submissions advanced by the learned counsels for the rival parties and I have perused the materials available on record. As may be

noticed, the petitioner has been issued LSC No. 10/1978 while for the same plot of land, the respondent No. 5 has been issued DPL Misc. No.

19/1997. The validity of the Land Lease is w.e.f, 01.05.1997 to 31.04.2022 i.e., for a period of 25 years. The petitioner in fact, along with 3 (three)

other persons approached the Civil Court at Aizawl, by initiating Civil Suit No. 1/1992 against the State respondents, and the respondent No. 5 was

also arrayed as the defendant No. 13. By filing the Civil Suit, the petitioner, as the 3rd plaintiff contended that he had purchased a plot of land situated

at Zemabawk, Kelpu Veng, from one Shri. Thangmuka, Village Council President of Zemabawk in the year 1971 and thereafter, started constructing

the Assam Type building on the said plot, in the month of December, 1974. However, the Chief Engineer, Project Pushpak, Boarder Road Task Force

(BRTF) in the year 1975 dismantled the Assam Type house constructed by the petitioner. According to the petitioner, he spent about Rs. 30,000/- for

constructing the Assam Type house. In the year 1977, the petitioner approached the Revenue authorities for converting the Village Council Pass into a

Revenue Pass and pursuant to his application, the Village Council Pass was converted into Shop Pass No. 12/1977 and later on, it was again

converted into Land Settlement Certificate No. 10/1978. The petitioner in his Suit also contended that the defendant Nos. 3 to 12, in the Civil Suit,

without his permission allowed the Mizo Hmeichhe Insuihkhawm Pawl (MHIP) (a Women's Organization) to construct a building in the suit land

for utilization as day care for children. Although the petitioner raised objection but his objection was not paid any heed. The oral objection as well as

the representations submitted by the petitioner having yielded no fruitful result, the petitioner filed the Civil Suit seeking for a direction to the President,

MHIP, Thuampui, Aizawl, to remove all the structures erected within his land and

alternately, to acquire the land as per the prevailing market rates

i.e., at the rate not less than Rs. 25 per Sq.ft along with 30% solatium and interest as per the Land Acquisition Act, 1894. The petitioner also claimed

for payment of rent for the period of occupation.

5. The Civil Suit No. 1/1992 was contested by the defendants, who are also respondents in the present proceeding including the respondent No. 5.

Consequently, the Suit was decreed in favour of the petitioner vide Judgment & Order dated 24.02.2011 and he was declared to be the rightful owner

of LSC No. 10/1978 and entitled to peaceful possession of the suit land. The petitioner was additionally awarded a sum of Rs. 30,000/- towards

damages of the Assam Type house. The amount was to be paid alongwith interest at the rate of 6% per annum by the Chief Engineer, Project

Pushpak.

6. Admittedly, against the Judgment & Order dated 24.02.2011 in Civil Suit No. 1/1992, no appeal has been preferred by anyone including the

respondents in the present appeal. However, during the pendency of the Civil Suit, the respondent Nos. 1 & 3 illegally constructed the Thuampui

Market-cum-Community Hall within the area of land covered by LSC No. 10/1978, belonging to him without his knowledge or consent.

7. The respondent Nos. 1 to 4 in their joint affidavit-in-opposition filed on 02.12.2014, contend that prior to construction of the Thuampui YMA

Community Hall, there was already an existing Community Hall. The respondent No. 5 requested the Local Administration Department (Town &

Country Planning Wing), which is now known as Urban Development & Poverty Alleviation Department (UD&PA) to construct a Market-cum-

Community Hall by producing Land Lease No. DPL Misl No. 19/1997. Thereafter, the Thuampui YMA Community Hall was demolished in its place,

the Market-cum-Community Hall came to be constructed. The respondents in their affidavit also contend that construction of the Market-cum-

Community Hall was completed on 22.11.2007 and during such construction, the petitioner did not raise any objection or did not have any complaint on

the construction and therefore, making a belated claim after about 6 years after completion of the construction of the building, is not acceptable and he

cannot have any say in on the matter at this stage. The respondents also contend that since the maintenance of the building, collection of fee, etc.,

which entirely being controlled and managed by the respondent No. 5, they have no further responsibility in the matter and the writ petition should be

dismissed for non-joinder of parties. However, it may be noticed that the respondent No. 5 during the course of the proceeding was impleaded as a

party respondent vide Order dated 01.06.2016. However, despite notice, they have failed to appear.

8. Mr. L.H Lianhrima, the learned senior counsel for the writ petitioner upon being asked as to why the petitioner did not seek execution of the

Judgment & Order dated 24. 02.2011 by filing an appropriate petition, the learned senior counsel submits that the construction of the Thuampui

Market-cum-Community Hall was undertaken by the Urban Development & Poverty Alleviation Department (UD&PA), who were not a party to the

Suit before the Civil Court. He further submits that with regard to the illegal construction made by the MHIP as well as the respondent No. 5, the

matter being subjudice before the Civil Court, there was no occasion for the petitioner to make an objection. The petitioner was also not in the

knowledge of the issuance of the Land Lease to the respondent No. 5. It was only after filing of the affidavit-in-opposition by the respondent Nos. 1 to

4 that the same has come to knowledge of the petitioner. Therefore, under such circumstances, the respondents, without acquiring the land of the

petitioner cannot deny him from enjoyment of peaceful possession of his land. Even if some construction has been undertaken at the behest of the

respondent No. 5, the same cannot be an impediment either from releasing the vacant possession of land to the petitioner or from acquiring the land.

9. From a perusal of the LSC No. 10/1978, it can be seen that a plot of land covering an area of 0.16 bighas was issued to the petitioner by the Land

Revenue & Settlement Department through the Assistant Settlement Officer on 29.03.1978. The LSC was issued superseding Shop Pass No.

12/1971. On the other hand, the certificate of land lease under DPL Misc. No. 19/1997, covering 0.16 bighas with the location at Thuampui has been

leased out in the name of President, Thuampui Branch Y.M.A. The certificate of land lease is annexed as Annexure-1 in the affidavit of

respondent Nos. 1 to 4. The land lease, further, indicates that it has the Government's sanction conveyed vide letter No. K.

15012/10/1992 is REV dated 19.03.1997 and it was issued by the Director of Land Revenue & Settlement. As may be noticed, Civil Suit No. 1/1992

was pending as on 19.03.1997 when the State Government gave its sanction for the land lease and as on 09.06.1997 when the land lease was actually issued.

10. Section 4, 7 & 8 of the Mizo District (Land & Revenue) Act, 1956 may be reproduced as below:-

4. No person shall acquire by length of possession or otherwise any right over land disposed of, allotted or occupied before the commencement of this Act unless such land had been

recorded and registered either in the Deputy Commissioner's Office or the District Council's Office. 7. Settlement holders' right over

land:- The settlement holders shall have heritable and transferrable right of use on or of sub-letting in his land subject to:- (a) the payment of all

revenue and taxes from time to time legally assessed or imposed in respect of the land; (b) Such terms and conditions as are expressed in his

settlement lease, and rules made thereunder. 8. Power of the Administrator over vacant land:- In the case of any land over which no person has right

of use or occupancy under the Act or which is not under use or occupancy of the Government, the administrator may direct that:- (a) such land may

be disposed of by way of grant, lease or otherwise in the manner prescribed; (b) the person who has entered into unauthorized occupation of such land

may be rejected in the manner prescribed; (c) any crop, building or other constructions erected without authority may be disposed of in a manner it

deems fit.

11. From a perusal of the above provisions as well as the respective land documents of the petitioner and the respondent No. 5, since the land was

already settled in favour of the petitioner by the issuance of LSC No. 10/1978 on 28.03.1978, the State respondents could not have issued the land

lease i.e., DLP Misc. No. 19/1997 to the respondent No. 5 for the same plot of land and moreover during the pendency of the Civil Suit wherein they

were also parties including the respondent No. 5 as may be noticed. Therefore, the land lease issued to the respondent No. 5 is clearly in violation of

the Mizo District (Land & Revenue) Act, 1956 and therefore, without any legal sanctity. However, having regard to the fact that the State

respondents have in the meantime already constructed a market-cum-community hall over the plot of land in question, the issuance of DLP Misc. No.

19/1997 is therefore not interfered with and instead, I am of the opinion that

ends of justice would be served if the petitioner's land is acquired and compensation paid to him by the State respondents.

12. It is ordered accordingly.

13. In the result, the State respondent Nos. 1 to 4 within a period of 1 (one) month from the date of receipt of a certified copy of this order are

directed to initiate steps to acquire the land of the petitioner covered by LSC No. 10/1978 as per the relevant law applicable and to pay him

compensation. The entire process shall be undertaken as expeditiously as possible and within the outer limit of 5 (five) months from the date of

initiating the acquisition proceedings as directed.

14. With the above observation and direction, the writ petition stands allowed.