
(2007) 06 GAU CK 0050
In the Gauhati High Court

Chalthiangi

APPELLANT

Vs

State of Mizoram and Others

RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:

Mizo District (Land and Revenue) Act, 1956 — Section 2(11), 2(8)

Citation : (2007) 4 GLT 166

Hon'ble Judges : Maibam B.K. Singh, J

Bench : Single Bench

Judgement

Mutum B.K. Singh, J.—On setting aside the Judgment and order dated 23rd February, 2005 passed by this Court in RSA No. 4/2004 by the Hon"ble Apex Court vide order dated 27th February, 2006 passed in Civil Appeal No. 1319/2006 (arising out of SLP. (Civil) Nos. 18543-18544 of 2005), this case has been remitted with directions for treating the same as a First Appeal from the decision of the Title Suit No. 2/1990 of the Court of Addl. Deputy Commissioner(J), Lunglei, Mizoram and deciding it with regard to questions of fact and law. Accordingly, this case has been re-registered as RFA No. 02/2006.

2. That, this case is now being taken up for the third round by this Court. The Judgment and decree dated 27.07.2004 passed in Title Suit No. 2/1990 by the learned Addl. Deputy Commissioner(J), Lung lei, Mizoram, dismissing the suit filed by the plaintiff-appellant but decreeing/declaring the Secretary, Home Department, Govt. of Mizoram as the rightful and legal owner of the land in dispute and further directing the respondent Nos. 5 to 8 to cancel LSC No. 57/1988 and allot another suitable site to the plaintiff-appellant, is impugned in this appeal. Pending final disposal of the said suit, the original plaintiff (Ngurchhina) expired and as such the appellant has been brought on record as LR of the deceased plaintiff.

3. Heard Mr. George Raju, learned Counsel for the appellant and Mr. N. Sailo, and learned Additional Advocate General for the respondents.

4. Briefly, facts leading to this appeal are that the suit land was settled with late Ngurchhina, the husband of the appellant, on 02.02.1988 by issuing Land Settlement Certificate (in short "LSC") No. 57/1988 along with the Non-Encumbrance Certificate and No Objection Certificate marked Exbt.-P/1, P/3 & P/4 respectively. On 16.03.1989 the deceased went to the suit land in order to start construction of a building thereon but the respondent-defendant No. 3 and his men were found developing the suit land for their own use. On protest, the respondent-defendant No. 3 claimed that the suit land was allotted to the Police Department under Pass No. Misc. 88/1953 which was later on converted into Pass No. DPL. 195/1980 and continued to construct buildings thereon. Representations submitted to the concerned authority for restraining the respondent-defendant No. 3 and his men from constructing any building over the suit land and handing over the vacant possession of the same to him, were all ended in smoke. Hence the suit for the reliefs extracted herein below:

(a) Let a decree be passed declaring that the plaintiff is the legal owner of the land covered under LSC No. 57 of 1988 and the plaintiff has right, title over the suit land.

(b) By way of permanent/mandatory injunction the defendants be restrained from passing any orders detrimental to the plaintiff in respect of the suit land.

(c) By way of permanent/mandatory injunction the defendants be restrained from erecting any structures within the suit land.

(d) Let the decree be passed declaring that the structures erected by the defendant No. 3 within the suit land in spite of the objection raised by the plaintiff be illegal.

(e) Let the rent calculated as per the provisions of Mizoram Urban Rent Control Act be decreed in favour of the plaintiff for the occupation of the suit land by the defendant No. 3.

(f) Let a decree be passed ordering the defendants to give vacant possession of the land covered under LSC No. 57 of 1988 to the plaintiff. If the defendants want to acquire the suit land for public purposes, the defendants be directed to pay to the plaintiff adequate compensation calculated as per the provisions of the Land Acquisition Laws.

(g) Let the cost of the suit be decreed in favour of the plaintiff.

(h) Let a decree be passed in favour of the plaintiff against the defendants for any other and further reliefs to which the plaintiff is entitled as per law, justice, equity and good conscience.

5. That, the suit was contested by the respondent-defendants by filing two sets of written statements contending, inter alia, that the suit land was already settled with the Police Department under Pass No. Misc.88/1953 which was later on converted into Pass No. DPL. 195/1980, the suit land has been under the

actual and physical possession of the Police Department and that the plaintiff, who was the then Minister of State, having exercised undue influence of his position upon the Revenue staff, managed to get LSC of the suit land but there was no official order for allotment of the house-site by the competent authority in his favour. The alleged LSC No. 57/1988 was issued by the Revenue Department, Lunglei under the order of the plaintiff himself who was a Minister in 1988.

6. That, from the pleadings of both sides, the learned trial court framed the following 7 (seven) issues:

- (1) Whether the present suit is maintainable in its present form and style?
- (2) Whether the suit is bad for non joinder or mis-joinder of parties?
- (3) Whether the plaintiffs have any cause of action due to the State Government?
- (4) Whether the land covered by LSC No. 57 of 88 falls within Pass No. Misc. 88/53 and Pass No. DPL 195 of 1980?
- (5) Whether the defendants are having the ownership over the suit land?
- (6) Whether the Settlement holder has better right than the Pass holder?
- (7) Whether the plaintiff is entitled to any relief, if so, to what extent?

7. That, 3 (three) plaintiff-witnesses including the plaintiff himself were examined and exhibited as many as 14 (fourteen) documents without objection during the course of trial. And that, 2 (two) witnesses were examined on behalf of the defendants and also exhibited 4 (four) documents marked Exbt.-D/I to D/IV.

The learned trial court, after appreciating the evidences on record and upon hearing the submission of both sides, decided the Issue Nos. 1, 2 & 3 in favour of the appellant-plaintiff. The Issue No. 4 was decided by holding that the land covered by LSC No. 57/1988 falls within Pass No. Misc. 88/1953 and Pass No. DPL. 195/1980. The learned trial court took up the Issue Nos. 5, 6 & 7 jointly and decided that the settlement holder has better right than the Pass-holder; the Pass-holder has only right of use or occupancy of the land in question under certain conditions mentioned in the lease terms. However, the learned trial court declined to grant any relief in favour of the appellant-plaintiff on the grounds that the land under LSC No. 57/1988 falls within the area covered by Pass No. DPL. 195/1980 and accordingly, the Government of Mizoram has no right to issue the LSC of the suit land in favour of the appellant-plaintiff until and unless the Pass No. DPL. 195/1980 is cancelled. On the other hand, the learned trial court decreed and ordered the Secretary, Home Department, and Govt. of Mizoram as the rightful and legal owner of the suit land, the respondent-defendant Nos. 5 to 8 were directed to cancel the LSC No. 57/1988 and to allot another suitable site to the appellant-plaintiff.

8. That, Mr. George Raju, the learned Counsel appearing for the appellant-plaintiff has submitted that the learned trial court passed the impugned order by misappreciating the evidences on record, misinterpreting the relevant provisions of law and basing on extraneous circumstances. The learned trial court ought to have decreed the suit in view of the evidences on record but miserably failed to do so. Mr. N. Sailo, learned Addl. Advocate General, on behalf of the respondents, submits that there is no illegality, irregularity or otherwise in the impugned judgment and that the learned trial court, after proper application of judicial mind on the facts and circumstances and the evidences on record, rightly declined to grant any relief to the appellant-plaintiff. The appellant-plaintiff did not acquire any right or title over the suit land as the same falls within the area covered by the Pass No. DPL. 195/1980, the learned Counsel strenuously urged.

9. That, upon hearing the respective submission of both learned Counsels and talking into consideration of the facts proved and admitted by both sides, the points for determination of this appeal are formulated as below:

(1) Whether the Land Settlement Certificate can be issued without canceling the previous Pass issued in respect of the same land?

(2) Whether the appellant-plaintiff has got right and title over the suit land by virtue of LSC No. 57/1988, if so, whether the appellant-plaintiff is entitled to the reliefs claimed?

10. That, the facts admitted by both sides before the learned trial court are that a piece of land measuring 18899 sq mtr. =4.66 acres situate at Lunglei between the Medical Department and Circuit House, was allotted by the Revenue Department, Govt. of Mijoram, in favour of the Secretary, Home Department, Govt. of Mizoram for the purpose of Police Complex in 1980 under Pass No. DPL. 195/1980 dated 9th June, 1980. The said Pass No. DPL. 195/1980 (Exbt. D-II) was issued in lieu of Pass No. Misc. 88/19 (Exbt. D-I). And that subsequently, a piece of land (suit land) measuring 0.04 bigha=591 sq. ft.=55 sq. mtr. situate at Chandmari a Sanghlira in bul Circuit House leh A.P. tlang Panna Inkar i.e. in between the Circuit House and A.P. tlang near the house of Sanghlira, was settled with late Ngurchhina under the Certificate of Land Settlement bearing No. 57/1988 issued by the Assistant Settlement Officer-I, Lunglei District, Lunglei on 02.02.1988 (Exbt. P-1). Further, both sides have also admitted that the suit land falls within the area of lands allotted in favour of the Secretary, Home Department, Govt. of Mizoram, for the purpose of Police Complex under Pass No. DPL. 195/1980 by the Revenue Department.

It may be pointed out that neither the respondent No. 3 nor the Secretary, Home Department, Govt. of Mizoram filed any suit or cross suit or petition before any competent Court or Forum against the issuance of the said LSC No. 57/1988 till date. Similarly, the appellant-plaintiff has also not taken any plea for cancellation for the Pass No. DPL. 195/1980 in the case at hand.

11. That, keeping the above admitted position of facts in mind, the points for

determination are to be examined in the light of the relevant provisions of the Act and Rules, the terms "Settlement-holder" and "Pass-holder" are defined u/s 2(8) and 2(11) of the Mizo District (Land and Revenue) Act, 1956 respectively, which are extracted below.

2(8) "Settlement-holder" means any person other than a pass-holder, who has entered into an engagement with the Administrator to pay land revenue and is deemed to have acquired status of settlement-holder u/s 7.

2(11). "Pass-holder" means a person who has the temporary right of use and occupancy over a specified plot of land for a specified period under such terms as the Administrator may prescribe in the pass he holds.

12. That, the rights of "Pass-holder" and that of "Settlement-holder" are given u/s 5 and 7 of Chapter-II of the Mizo District (Land and Revenue) Act 1956 which are extracted below:

5 Rights of Pass holder--A pass-holder shall have no right in the soil beyond a right of user for the period for which it is given and shall have no right of transfer, or of inheritance beyond the period of the pass or of subletting.

7. Settlement-holder's right over land:

The settlement-holder shall have heritable and transferable 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 the Rules made thereunder.

13. That, a conjoint reading of the above definitions demonstrate that the land allotted under "Pass" is a temporary in nature, a pass-holder has only temporary right of use over the land for a specific period mentioned in the "Pass" without having any right to transfer or of inheritance or of subletting. Whereas a Settlement-holder has every right, title, interest including the heritable and transferable rights by virtue of the LSC until and unless the settlement is cancelled for violation of terms and conditions of settlement. It is clear that decides other mode of settlement land can be settled either permanently or temporarily with any individual or society etc, under the relevant land laws of the State of Mizoram. In the case at hand, it has been proved that the suit land was settled permanently with the plaintiff under LSC No. 57/1988, marked Exbt. P-1 and thus, the plaintiff-appellant has definitely better right and title than any other "Pass-holder" in respect of the suit land.

14. That, the learned Counsel appearing for the respondents has contended that no LSC could be issued with anyone except the "Pass-holder" if the land in question was previously allotted under "Pass" in view of the provision of Rule 11 of the Mizo District (Land and Revenue) Rules, 1967. No land can be settled with

any person unless the previous allotment of the same land under "Pass" or permit has been cancelled. According to the learned trial court, the Pass No. DPL. 195/1980 was issued in accordance with the provisions of Act and Rules and accordingly until and unless the said "Pass" has been cancelled, the authority has no right to issue LSC with the plaintiff in respect of the suit land as the suit land falls within the area covered by Pass No. DPL. 195/1980. But the Mizo District (Land and Revenue) Act, 1956 and the Rules framed there under are silent on this point. Rule 11 of the Mizo District (Land and Revenue) Rules, 1967 simply provides that the land previously allotted under "Pass" or permit shall be settled under the Act and in accordance with the provision of Rule 6. It depicts that the land previously allotted under "Pass" or permit can also be settled with any other person other than the "Pass-holder" but the settlement has to be carried out in accordance with the provision of Rule 6. There is no barring provision either under the Mizo District (Land and Revenue) Act, 1956 or Rules framed thereunder from issuance of LSC, in the above given situation, with any other person without canceling the previous "Pass" or permit issued in respect of the same land.

15. That, for the foregoing discussions, in the absence of barring provision under the Mizo District (Land and Revenue) Act, 1956 and Rules framed there under and specific pleading on the above point in the case at hand, this Court is constrained to hold the above point in affirmative.

16. That, admittedly it has been successfully proved that the suit land was permanently settled with late Ngurchhina, the husband of the appellant. The relevant LSC bearing No. 57/1988 along with non encumbrance certificate and no objection certificate were issued on 02.02.1988. As per the legal position discussed above, this court is of the firm opinion that the appellant-plaintiff has got right and title over the suit land by virtue of the said LSC No. 57/1988. On the other hand, it is also an admitted fact that the suit land is a part and parcel of the land which was previously allotted as an area of Armed Police under Miscellaneous Pass No. 88/1953 issued by the Office of the Lushai Hills District Council Executive Department, under the Lushai Hills District (House-sites) Act, 1953 and later on a new Pass bearing No. DPL. 195/1980 in lieu of the Pass No. Misc. 88/1953 has been issued in favour of the Secretary, Home Department, and Govt. of Mizoram. It appears that the land can be allotted with anyone under Pass even after the Mizo District (Land and Revenue) Act, 1956 and Mizo District (Land and Revenue) Rules, 1967 came into force. Rule 10 of the Mizo District (Land and Revenue) Rules, 1967 permits the allotment of land under Pass in accordance with the Lushai Hills District (House-sites) Act, 1953 until and unless the said Act has been repealed. From the above provisions of Act and Rules, it can be safely concluded that the Pass bearing No. DPL. 195/1980 was issued in accordance with the provisions of the relevant Rules.

17. That, it is also in the evidence that though the suit land was settled with the plaintiff in 1988, the plaintiff went to the suit land for the first time on

16.03.1989 and found the respondent No. 3 and his men developing the suit land. Evidences further reveal that the Police Department has been possessing the land allotted under Pass No. Misc. 88/1953 corresponding to Pass No. DPL. 195/1980 since 1953 continuously. As pointed out in the foregoing paragraph, the appellant-plaintiff made no pleading for cancellation of the Pass bearing No. DPI, 195/1980 in respect of the suit land in the case in hand except the prayer for giving vacant possession of the land covered under LSC No. 57/1988 to the appellant-plaintiff. From the above evidences on record, it cannot be said that the Police Department has taken over the possession of the suit land illegally. Since the Police Department has been possessing the land allotted under Pass No. DPL. 195/1980 i.e. under the authority of law including the suit land, the relief for vacant delivery of possession of the suit land cannot be entertained at this juncture unless the possession of the suit land by the Police Department is found to be illegal and liable to be evicted therefrom.

18. That, the learned trial court has erroneously declared the Secretary, Home Department, Govt. of Mizoram who is not even a party in the case at hand, as rightful and legal owner of the land in question. And that the direction given to the respondent Nos. 5 to 8 to cancel LSC No. 57/1988 and allot another suitable land to the appellant-plaintiff are contrary to the facts and circumstances of the case and not supported by the evidences on record. The above findings of the learned trial court are quite perverse and not sustainable in the eye of law.

19. That, for the reasons and discussions made in the foregoing paragraphs, it is declared that the appellant-plaintiff has got right and title over the suit land by virtue of the LSC No. 57/1988, dated 02.02.1988. However, the appellant-plaintiff is not entitled to the other reliefs claimed as the suit land is found to be under lawful possession of the Police Department, Govt. of Mizoram. Consequently, the Judgment and decree dated 27.07.2004 passed by the learned Additional Deputy Commissioner (J), Lunglei, Mizoram is set aside. In the result, the appeal is partly allowed and the parties are to bear their own cost. Announced in the open Court.

Prepare decree accordingly.