

GAHC030004272023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/29/2023

Smt. Lalrinpuii
D/o J. Thanseia (L),
W/o Lalnithanga,
R/o Biak In Mual,
Ramhlun North, Aizawl, Aizawl District, Mizoram

VERSUS

Sh. H. Rochungnunga and 4 Ors.
S/o Zahluna,
R/o Electric Vengchung,
Aizawl, Mizoram 2:The Secretary to the Government of Mizoram

3:The Director

4:The Joint Director

5:The Assistant Settlement Office

Advocate for the Petitioner : Mr Lalfakawma

Advocate for the Respondent : Mrs. H Lalmalsawmi for R2-R5

Linked Case : I.A.(Civil)/97/2023

Smt. Lalrinpuii
D/o J. Thanseia (L)

W/o Lalnithanga

R/o Biak In Mual
Ramhlun North
Aizawl
Aizawl District
Mizoram

VERSUS

Sh. H. Rochungnunga and 4 Ors.
S/o Zahluna

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Aizawl
Mizoram

2:The Secretary to the Government of Mizoram
Land Revenue and Settlement Department
Aizawl
Mizoram

3:The Director
Land Revenue and Settlement Department
Aizawl
Mizoram

4:The Joint Director
Land Revenue and Settlement Department
Aizawl
Mizoram

5:The Assistant Settlement Officer
Land Revenue and Settlement Department
Aizawl District
Aizawl
Mizoram

Advocate for the Petitioner : Mr Lalfakawma
Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
JUDGMENT

Date : 29-11-2023

JUDGMENT & ORDER (CAV)

Heard Mr. Lalfakawma, learned counsel for the appellant along with Mr. T. Lalnunsiam, learned counsel for the private respondent No.1 and Mrs. H. Lalmalsawmi, learned Govt. Advocate for the State respondent Nos. 2-5.

2. The instant appeal is against the Order dated 19.06.2023 passed by the learned Senior Civil Judge-III in Civil Suit No.15/2022, wherein the learned Civil Judge had dismissed the suit under Order VII, Rule 11 (d) of CPC holding that the plaintiff/appellant being aggrieved with the Settlement Order dated 17.1.2022 passed by the Revenue Court (Director, Land Revenue & Settlement, Mizoram, Aizawl) the plaintiff/appellant should have approached the proper forum as provided under Section 89 (3) of the Mizoram Land Revenue Act, 2013.

3. The appellant aggrieved by this order has approached this Court by way of Regular First Appeal.

4. The facts of the case in a nutshell is that, the dispute is between the appellant and respondent No.1 regarding the boundary and the possession of their land covered

by their land certificates, issued by the Revenue Department. The appellant had filed a complaint dated 7.01.2021 to the Joint Director of Survey, Directorate of Land Revenue & Settlement, Mizoram, Aizawl with regards to the boundary of the land of the respondent No.1. The respondent had displayed his land covered under LSC no.1702 of 1985 and LSC No.3081 of 1986 which according to the appellant were within the boundary limits of the appellants property covered by LSC NO.103101/01/954. Thereafter, on 17.01.2022, the Director, Land Revenue & Settlement, Mizoram, Aizawl had issued the impugned Settlement Order dated 17.01.2022, that the landed area of the plaintiff/appellant under LSC 954 of 1989 was found overlapping the neighboring lands and was to be corrected and reduced to 995 sq.mt and upheld the landed area of the respondent covered under LSC no.1702 of 1985 and LSC No.3081 of 1986. Aggrieved by this order dated 17.01.2022, the plaintiff/appellant had filed the Civil Suit No.15/2022 against the defendant/respondent for declaring the Settlement Order dated 17.01.2022 as null and void and for declaring plaintiff/appellant the rightful owner of the suit land covered under LSC No.103101/01/954 of 1989 located at Zemabawk Mitla Mual, Aizawl and also for cancellation of the landed property covered under LSC No.AZL-1702 of 1985 and LSC No.3081 of 1986 issued to the defendant/respondent No.1. The Respondent no.1 filed their preliminary written objection on the maintainability of the suit.

5. The learned trial court thereafter framed the following issues;

1. *Whether this court has jurisdiction to entertain the instant suit or not?*

2. *Whether the instant suit is liable to be rejected or not?*

6. After hearing both the parties, the learned trial court dismissed the suit, being of the view that, by virtue of sections 76, 89, 90 & 96 of the Mizoram (Land Revenue) Act, 2013, the Civil Court does not have jurisdiction over the subject matter and the Appellant/Plaintiff should approach the proper forum under Section 89 (c) of the Mizoram Land Revenue Act, 2013. Aggrieved, the instant Regular First Appeal

7. Mr. Lalfakawma, learned counsel for the appellant submits that on reading of Sections 76 & 77 of the Mizoram Land Revenue Act, 2013, the state has to authorize an officer to act as a Revenue Officer as mentioned in section 77 of the Revenue Act. However, on making an enquiry through RTI, in the reply dated 3rd August, 2023, they were informed that "*there is no copy of Government order authorizing a Revenue Officer to exercise his power as the Mizoram Land Revenue Act, 2013 is a Legislative Act in itself*". He thus submits that, in view of the fact that there is no letter authorizing a Revenue officer as per the requirements under Sections 76 & 77 of the Mizoram Land Revenue Act, there is no Revenue Court functional under Sections 76 & 77 of the Mizoram Land Revenue Act. The learned counsel further submits that though section 96(2) (f) of the Mizoram Land Revenue Act, 2013, states that, no civil Court shall exercise jurisdiction on matters relating to distribution of land or allotment of

land, revenue or partition of any land under the Act or any other law for the time being in force, the learned counsel submits that this distribution of land or allotment of land is in respect to only new allotment of land. He submits the instant case is with regards to overlapping of LSCs issued to the parties and therefore, section 96(2)(f) is not attracted. He has also led this Court to Section 97(b) of the Act, and submits that the Civil Courts can entertain suits between private parties for the purpose of establishing any private rights in case it is affected by any entry in any land record and therefore, the Civil Court is the proper forum to decide the case. He has cited ***Thanda Bala Choudhury & Anr. Vs. Birendra Kumar Choudhury***, reported in ***(2002) 3 GLR 473 (para 3, 4, 18& 19)*** where a Coordinate Bench held that Civil Court has jurisdiction with regards to declaration of title.

8. Mrs. H. Lalmalsawmi, learned Government counsel for the State respondents No. 2 to 5 submits that in response to this Court's Order dated 10.08.2023, wherein the Government Advocate was to obtain instructions as to whether an authorization letter/order is to issued by the State Government to a Revenue Officer, to act as a Revenue Court in terms of

Section 77 of the 2013 Act, the Government advocate was also to obtain instructions as to whether Civil Court can decide disputes regarding boundary possession and ownership of property in terms of Section 97(2) of the 2013 Act, the learned government advocate has produced a copy of the instructions received, dated

05.10.2023, which reads as follows:

“1) With regard to the Revenue officers to act as Revenue court in terms of Sec. 77 of the Mizoram (Land Revenue) Act 2013, the appointment letter of any Revenue officers is to be regarded as an authorization letter from the state Government for such Revenue officer to act as Revenue court and no other authorization letter/order is required for this purpose.

2) As per Sec. 106 of the Mizoram (Land Revenue) Act 2013, the Civil Court is only barred to set aside or modify any order made in respect of land revenue assessment, collection of land revenue or taxes or imposition of penalty on arrear. As such, there is no bar for civil court to make decision in dispute regarding boundary possession and ownership of property.”

9. Mr. T. Lalnunsiam, learned counsel for the private respondent No. 1 on the other hand submits that Section 76 of the Mizoram Land Revenue Act is to be read together with Section 77, wherein authorization of an officer is required with regard to the place of hearing and that all revenue officers are actually authorized as per Section 76 of the Revenue Act. He further submits that as per Section 96 of the Mizoram Land Revenue Act, the Revenue Court is competent to settle the dispute between the parties. He submits that the appellant is aware of this fact and had actually approach the Revenue Court vide its letter dated 07.01.2021 and the Revenue Court accordingly, in its Order dated 17.01.2022 had passed a Settlement Order with regard to the instant dispute between both the parties. The Settlement Order was passed by the Director, Land Revenue & Settlement, Mizoram, Aizawl. If aggrieved by

the Settlement Order dated 17.01.2022, the appropriate step to be taken by the appellant, was to approach the Appellate Court which is the Commissioner Secretary as per Section 89 of the Mizoram Land Revenue Act. He submits that approaching the Civil Court again with the same set of facts is barred by the principle of *res-judicata*. In support of his submission he has the decision of the Apex court in ***Swamy Atmananda & Ors. Vs. Sri Ramakrishna Tapovanam & Ors., reported in 2005 10 SCC 51 (para 26)***. The learned counsel has also cited ***State of M.P. Vs. Ghisilal***, reported in ***2021 SCC Online SC 1098 (paras 14, 15 & 16)***, wherein the Apex Court held that if there is a legal provision and the order is passed by a competent authority, the provision for appeal/revision should be before the designated appellate or revisional authorities.

10. The learned counsel further submits that since the appellant had initially approached the Revenue Court, the jurisdiction of the Revenue Court was not challenged before the Civil Court and therefore, the instant appeal is liable to be dismissed and set aside.

11. I have heard the submissions of both the rival parties and have perused the documents on record. From the submissions made by the learned counsels for both the parties, the points for consideration are:

- (i) whether or not the Settlement Order dated 17.01.2022 regarding the

boundary of the land within the LSC's of the private parties, made by the Director, Land Revenue & Settlement, Mizoram, Aizawl is an order made by a Revenue Court under the Mizoram (Land Revenue) Act, 2013.

(ii) If so, whether the Civil Court is the appropriate court to decide the instant dispute between the private parties when there is a designated appellate authority under the Act.

12. It is seen that the State respondents have clarified that *with regard to the Revenue officers to act as Revenue court in terms of Sec. 77 of the Mizoram Land Revenue) Act 2013, the appointment letter of any Revenue officers is to be regarded as an authorization letter from the state Government for such Revenue officer to act as Revenue court and no other authorization letter/order is required for this purpose.* In view of the above clarification, it can be safely held that Revenue Courts are functioning in the State under the Mizoram Land Revenue Act without the need to authorize the Revenue officers to function as such. Section 76 of the Act provides as follows: "*Revenue Officers to be Revenue Courts (1) A Revenue Officer, while exercising power under this Act or any other law for the time being in force, will inquire into or to decide on any question of fact or law arising out of orders for determination between the Government and any person or between parties to any proceedings, shall be a revenue court.*

(2) Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the revenue court to make such order, as may be necessary for the ends of justice or to prevent the abuse of the process of the revenue court."

Since it has been clarified that no separate authorization is required under

section 76 and 77 of the Mizoram (Land Revenue) Act, 2013, the Settlement Order dated 17.01.2022 made by the Director, Land can be said to be made as a Revenue Court.

13. It is also seen that though section 97 (b) provides that the Civil Courts are not prevented from entertaining Suits between private parties for the purpose of establishing any private right, in case it is affected by any entry in any land record. However, in the instant case, it is an admitted fact that the appellant had first approached the Revenue Court for settlement of their dispute vide the letter dated 07.01.2021 which was heard and considered and a Settlement Order dated 17.01.2022 was made as provided under section 76 of the Mizoram (Land Revenue) Act, 2013. Thus, considering the fact that the appellant had initially approached the Revenue Court vide a letter dated 07.01.2021 requesting the Respondent no.4 to take necessary action and to solve their problems, the Settlement Order dated 17.01.2022 was made by the Respondent No.3, Director Land Revenue Department as a Revenue Court after hearing both the parties. This Settlement Order being the decision of the Revenue Court this court finds that, if aggrieved by the Settlement Order, the appropriate step to be taken by the appellant, was to approach the Appellate Court which is the Commissioner Secretary as per Section 89 of the Mizoram Land Revenue Act.

14. This court also finds it appropriate to refer herein, to the decision of Apex Court

in ***State of M.P. Vs. Ghisilal***, wherein facts of the case is with regards to the order passed under the Urban Land (Ceiling and [Regulation](#)) Act, 1976. The Apex has held that :-

“The Urban Land (Ceiling and [Regulation](#)) Act, 1976 is a self-contained Code. Various provisions of the Act make it clear that if any orders are passed by the competent authority, there is provision for appeal, revision before the designated appellate and revisional authorities. In view of such remedies available for aggrieved parties, the jurisdiction of the civil courts to try suit relating to land which is subject-matter of ceiling proceedings, stands excluded by implication. Civil court cannot declare, orders passed by the authorities under the [ULC Act](#), as illegal or non est.”

This court is also of the opinion that the decision of a co-ordinate bench of this court in ***Thanda Bala Choudhury & Anr. (Supra)*** is not appropriately applicable in the instant case, wherein the cited case relates to the jurisdiction of a Civil Court in Title Suit No.207/98, which is a dispute with regarding to the title and interest over immovable properties.

15. In view of the above findings, this court is of the considered view that since there is a provision for appeal if aggrieved by the Settlement Order of the Revenue Court dated 17.01.2022 under the Mizoram Land Revenue Act, no cogent grounds have been made out for interfering with the Order dated 19.06.2023 passed by the learned Senior Civil Judge-III in Civil Suit No.15/2022.

16. RFA No.29 of 2023 thus stands dismissed and disposed of.

JUDGE

Comparing Assistant