

GAHC030004802023



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

Case No. : WP(C)(Suo Moto)/1/2023

In Re Sh. V. Liandawla
Aizawl, Mizoram.

VERSUS

XXXX
XXXX

Advocate for the Petitioner : Mr Zoramchhana (Amicus Curiae)

Advocate for the Respondent :

ORDER

Date : 08-11-2023

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Mr. Zoramchhana, learned Amicus Curiae is present. No one appears on behalf of Sh. V. Liandawla.

2. This case has been taken up as Suo Moto under Article 227 of the Constitution of India against the Order dated 20.09.2021 passed by the Court of the Senior Civil Judge-III, Aizawl in Declaratory Suit No. 54/2021.

3. The facts of the case is that one Sh. V. Liandawla had prayed for declaring him as the legal and rightful owner of suit land covered by House Pass No.

1106/2005 in Declaratory Suit No. 54/2021. In the plaint submitted by Sh. V. Liandawla, there is no defendant. The same was filed before the Court on 20.04.2021. No notice was issued to anyone as there was no defendant. The document shows that the case was listed before the learned Trial Court only once i.e. on 20.09.2021, i.e., after 5 (five) months. The case was disposed of on the very first day the case was listed before the concerned Court, vide Order dated 20.09.2021, by declaring Sh. V. Liandawla as the legal and rightful owner of the land covered by House Pass No. 1106/2005.

4. The suit filed by Sh. V. Liandawla shows that he had bought the said land from one Sh. Sangthanmawia in the year 2005 for a sum of Rs. 5500/-. There is no sale deed made and neither is the letter made by the alleged Sh. Sangthanmawia, showing that he had sold the land to Sh. V. Liandawla, registered under the Indian Registration Act. No evidence was recorded by the learned Trial Court and no issues were framed. There being no defendant in the suit, there could be no cause of action for the plaintiff to file the suit.

5. The learned Amicus Curiae submits that the plaint filed by Sh. V. Liandawla does not show that there is any dispute that needed to be adjudicated by the learned Trial Court in terms of Order 2 Rule 1 CPC. Further, there is no defendant in terms of Order 1 CPC, which would have required the learned Trial Court adjudicate upon and settle questions involved in the suit. He further submits that though Sh. V. Liandawla has stated that he had bought the land covered by House Pass No. 1106/2005 from one Sh. Sangthanmawia, there is no registered Sale Deed to prove the same, despite the alleged letter written by Sh. Sangthanmawia stating that he had sold his land to Sh. V. Liandawla for Rs. 5,500/-.

6. The learned Amicus Curiae also submits that no issues were framed and no evidence was taken by the learned Trial Court before the learned Trial Court passed the impugned Order dated 20.09.2021. He submits that the impugned order, being an illegal order and in violation of the procedure laid down in the CPC, the same needs to be set aside.

7. I have heard the learned Amicus Curiae and have seen the Lower Court Record.

8. The stand of Sh. V. Liandawla is that he had bought the land from Sh. Sangthanmawia and in this regard, he has annexed a letter written by Sh. Sangthanmawia dated 15.12.2005, which states that Sh. Sangthanmawia had sold his House Pass No. 1106/2005 to Sh. V. Liandawla for Rs. 5,500/-. However, there is no Sale Deed annexed to the plaint submitted by Sh. V. Liandawla before the learned Trial Court.

9. In the case of ***Bondar Singh and Others –vs- Nihal Singh & Others*** reported in ***(2003) 4 SCC 161***, the Apex Court has held that under the law, a Sale Deed is required to be properly stamped and registered before it can convey title to the vendee. In the case of ***Suraj Lamp and Industries Private Ltd. (2) Through Director –vs- State of Haryana & Another*** reported in ***(2012) 1 SCC 656***, the Apex Court has held that transfer of immoveable property by way of sale can only be made by a deed of conveyance, which is duly stamped and registered as required by law. In the absence of the above, no right, title or interest in an immoveable property can be transferred.

10. In the present case, as there is no Sale Deed, no transfer of right, title or interest over the land covered by House Pass No. 1106/2005 could have been made in favour of Sh. V. Liandawla.

11. A perusal of the House Pass No. 1106/2005 issued in the name of Sh. Sangthanmawia show that the same had been issued on 17.08.2005. Section 5 of the Mizo District (Land and Revenue) Act, 1956, states as follows:

“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.”

Section 2(11) of the Mizo District (Land & Revenue) Act, 1956 (*herein referred to as 'The Act of 1956'*) also states that “*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 term as the administrator ... may prescribe in the Pass he holds*”.

12. Thus, a reading of Section 2(11) and Section 5 of the Act of 1956 clearly goes to show that a person who has been allotted a Pass under Section 5 of the Act of 1956 does not have any right in the soil beyond right of use for the period it is given. The Pass Holder also has no right to transfer the said pass to another person.

13. House Pass No. 1106/2005 was issued to Sh. Sangthanmawia and not to Sh. V. Liandawla. The Terms and Conditions of the House Pass No. 1106/2005 is reproduced as follows:-

“TERMS AND CONDITIONS

1. The Pass is valid for two years only. Within two years (to be calculated from the date the Pass is taken out) it is necessary that a house suitable for human

dwelling be constructed. The pass cannot be converted to LSC till a house is constructed.

2. Within 30 days of taking the Pass out, the Pass Holder is to construct stone pillar within his boundary and a Notice Board displaying the Plot No. and Pass No. along with area. The Notice Board is to be looked after properly.

3. The Pass Holder shall inform the Director, Land Revenue & Settlement, Mizoram before constructing a house.

4. Without first taking permission of the Govt., the Pass Holder cannot sell the whole or part of the land.

5. The Pass Holder does not have ownership of the land.

6. The Pass Holder at the time of constructing a house has to leave vacant one metre within his boundary. This includes toilet, water tank, pig sty, hen coop, etc.

7. This Pass can be cancelled or the area can be altered if the Pass area is used for any purpose prohibited by the Govt., if it is required for public purpose or any other reason.

8. The Pass Holder is to abide by any direction of the Govt. regarding the Pass. The Pass can be cancelled if the Pass Holder fails to abide by any direction of the Govt."

14. Terms and Conditions No. 4 of the House Pass No. 1106/2005 is to the effect that the Pass Holder cannot sell the whole or part of the land, without first taking permission of the Government. As such, the land could be sold to Sh. V. Liandawla by Sh. Sangthanmawia, only after taking prior permission of the Government. There is nothing in the pleadings submitted before the learned Trial Court, to show that prior permission had been taken by Sh. Sangthanmawia from the Government, for selling House Pass No. 1106/2005 to Sh. V. Liandawla.

15. Terms and Conditions No. 1 clearly provides that the Pass would be valid

for a period of two years. If within the period of two years a habitable residence was not built, the pass cannot be converted into an LSC. As there is nothing to show that a house was built by Sh. Sangthanmawia or any person on the said land, within the period of two years from the date of issuance of House Pass No. 1106/2005, the pass would have to be considered to have lost its validity. As such, no person including Sh. V. Liandawla can have any right, title or interest over the land, on the basis of House Pass, which had lost its validity from the year 2007.

16. In view of Sh. V. Liandawla claiming right, title and interest over House Pass No. 1106/2005 in the absence of any registered Sale Deed and as no house has been built by Sh. Sangthanmawia over the said land and as no prior permission had been taken from the Government for selling the said land to Sh. V. Liandawla, Sh. V. Liandawla cannot have any right, title or interest over House Pass No. 1106/2005.

17. The Division Bench of this Court in the case of ***People' Right to Information and Development Implementation Society of Mizoram (PRISM) -vs- State of Mizoram and Another, WP(C) No. 74 of 2016 (AB)*** has held that a Pass Holder only has temporary right of use and occupancy over the land for a specified period under such terms as may be prescribed. The Division Bench in the above case has further referred to Section 27 of the Mizoram Land (Revenue) Act, 2013, which has repealed the Act of 1956 and quoted Section 27 of the Mizoram Land (Revenue) Act, 2013, which is as follows:

“27. Rights of a Pass-holder:

A Pass-holder shall have no right in the land held by him beyond the

rights of use and occupancy for such period and under such terms and conditions as may be specified in the Pass and shall have no right of transfer, inheritance, or of sub-letting beyond the period so specified. Provided that where no period has been specified in the existing Pass, the validity of such Pass shall, unless renewed, be deemed to have continued as a valid Pass for a period not exceeding five years from the date of commencement of this Act."

18. As rightly submitted by the learned Amicus Curiae, Sh. V. Liandawla has not framed his pleadings for final decision/adjudication of any dispute with any person/authority. Further, no person or authority has been made a defendant in the case. No issues were framed or evidence recorded by the learned Trial Court. The prayer of Sh. V. Liandawla to declare him as the legal and rightful owner of the land covered by House Pass No. 1106/2005 was granted on the very day the case was listed in the Court, in total violation of the terms and conditions of the Pass and the reasons stated above. Further, no findings have been made by the learned Trial Court with regard to the validity of House Pass, keeping in view the Terms and Conditions of the House Pass. The patently illegal act of the learned Trial Court is in excess of its jurisdiction and not sustainable in law. As such, the impugned order has to be set aside.

19. In view of the reasons stated above, the Order dated 20.09.2021 passed by the Court of the Senior Civil Judge-III, Aizawl in Declaratory Suit No. 54/2021 is hereby set aside. A copy of this order be furnished to the concerned Judicial Officer through the learned District Judge, Aizawl.

20. The petition is accordingly disposed of.

21. In appreciation of the assistance provided by the learned Amicus Curiae,

his fee is fixed at Rs. 7,000/- to be paid by the Mizoram State Legal Services Authority.

JUDGE

Comparing Assistant